

# Exhibit 31



CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
DEPARTMENT

# NOTICE

JOB ADDRESS 8620 Spectrum Center Blvd		
CENSUS TRACT NO.	PERMIT NUMBER 30331	PLAN FILE NUMBER A
CONTRACTOR Swinerton Builders (858) 622-4040		
MAIL ADDRESS FOR <input type="checkbox"/> OWNER, OR <input type="checkbox"/> CONTRACTOR		

OWNER'S OR PERMITTEE'S NAME

☐ VIOLATION

**READ  
REVERSE  
SIDE**

☒ STOP WORK

NOTE:  
PRESENT THIS NOTICE WHEN  
MAKING APPLICATION FOR PERMIT

☐ CORRECTIONS REQUIRED

☐ PARTIAL APPROVAL

- ☐ NO PERMIT - REMOVE CONSTRUCTION, OR OBTAIN PERMIT AND MAKE ANY WORK COMPLY WITH BUILDING LAWS. (See comments on reverse side regarding penalty fees).
- ☐ CONSTRUCTION NOT IN ACCORDANCE WITH APPROVED PLANS AND PERMIT MAKE EXISTING WORK COMPLY WITH APPROVED PLANS AND PERMIT OR REMOVE IT.
- ☐ CALL ZONING DIVISION AT (619) 446-5000, CONCERNING VIOLATION OF ZONING REGULATION LISTED BELOW.
- ☐ CONTACT INSPECTOR AND ARRANGE FOR APPOINTMENT. (See telephone number below)
- ☐ CORRECTIONS LISTED BELOW MUST BE MADE BEFORE WORK CAN BE APPROVED.
- ☐ PAY REINSPECTION FEE (See back); THEN ☐ CALL FOR REINSPECTION AT (858) 581-7111
- ☐ WORK DESCRIBED BELOW HAS BEEN INSPECTED AND IS APPROVED.

This is a stop work notice regarding the top seventeen feet of this structure.

No work is to be done in this section of the structure until authorized by this department. FAA regulation must be clarified prior to continuing construction of the structure previously mentioned above.

For questions regarding this matter please contact Joe Harris (858) 573-1225

THE ACTIONS OR CORRECTIONS INDICATED ABOVE ARE REQUIRED WITHIN, 10/24 DAYS. THE SAN DIEGO MUNICIPAL CODE REQUIRES PENALTY FEES WHEN WORK HAS BEEN STARTED WITHOUT PERMIT.

NAME OF INSPECTOR (PRINT)

INSPECTOR'S SIGNATURE

OFFICE TEL. NO.

DATE

<input checked="" type="checkbox"/>	BUILDING
<input type="checkbox"/>	ELECTRICAL
<input type="checkbox"/>	HEATING
<input type="checkbox"/>	PLUMBING
<input type="checkbox"/>	REFRIGERATION
<input type="checkbox"/>	COMBINATION
<input type="checkbox"/>	SIGNS
<input type="checkbox"/>	MOBILE HOME

# Exhibit 32

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF TRANSPORTATION**

LEGAL DIVISION - MS 57

1120 N STREET, SACRAMENTO, CA 95814

P. O. BOX 1438, SACRAMENTO, CA 95812-1438

PHONE (916) 654-2630

FAX (916) 654-6128

TTY (916) 654-4086

*Flex your power!  
Be energy efficient!*

October 25, 2006

**OFFICE OF THE CITY ATTORNEY****CITY OF SAN DIEGO**

1200 Third Avenue, Suite 100

San Diego, CA 92101-4100

Attn: David E. Miller

Re: Sunroad Centrum Building Stop Work Order

Dear Mr. Miller:

This is in response to your letter of October 19, 2006, in which the City of San Diego has issued a "Stop Work Order" regarding the Sunroad Centrum Building 1 Project.

The Department confirms its prior position requesting that the City take action regarding the subject construction which violates both State law and federal recommendations. The Department, through its Division of Aeronautics, is tasked with protecting people and property on the ground from potential consequences of near-airport aircraft accidents. The Department contends that the potential severity of a near-airport aircraft accident is highly dependent upon the nature of the land use at the accident site. In this case, the height of the building that Sunroad Enterprises is constructing is not only a nuisance, but a hazard and an obstruction, thus violating the applicable Government Code sections and the State Aeronautics Act. The Department requests that the City continue to invoke the "Stop Work Order", and move forward with the revocation proceedings.

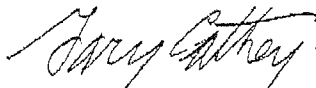
Also, the Department requests that it receive all applicable notices regarding the "Stop Work Order" and the revocation proceedings, as the Department would like the opportunity to intervene and participate in the subject hearings.

*"Caltrans improves mobility across California"*

DSD0002202

David E. Miller  
October 25, 2006  
Page 2

Finally, for informational purposes, please note that on October 3, 2006, Sunroad Enterprises did respond stating that it would be applying for a permit pursuant to Public Utilities Code, Section 21659. Sunroad also requested additional information from the State. On October 13, 2006, the State supplied the requested information. As of now, the Sunroad Enterprises has failed to apply for a permit pursuant to Public Utilities Code, Section 21659.



GARY CATHEY, Chief  
Office of Airports

*"Caltrans improves mobility across California"*

DSD0002203

# Exhibit 33

# **CITY OF SAN DIEGO AIRPORTS ADVISORY COMMITTEE**

## **MINUTES**

**Meeting of November 14, 2006  
Montgomery Field Airport Lobby**

**MEMBERS PRESENT:** Buzz Fink (Special Expertise), Rick Beach (Special Expertise), Jackie Ander (Serra Mesa Community Planning Group), Buzz Gibbs (Kearny Mesa Planning Group), Kevin O'Donnell (Special Expertise), Tom Ricotta (Otay Mesa Planning Group), Kathy Monsour (Clairemont Community Planning Committee), Chuck McGill (Montgomery Field User Group), Allen Kruse (Brown Field User Group), Scott Hasson (Tierrasanta Community Council), Juan Escalante (Brown Field Aviation Tenant), (Montgomery Field Aviation Tenant).

**MEMBERS ABSENT:** Cindy Ford (Montgomery Tower).

**STAFF PRESENT:** Jim Waring, Jim Barwick, Mike Tussey, Terry Price, Clayton Welch, John Serrano, Christian Anderson, Ernie Gesell, Phillip Miller, Tait Galloway, Wayne Reiter.

**GUESTS:** Tom Story, Richard Vernon, Gerald Blank, Lee Burdick, Michael McKenna, Bob Basso, Al Boyce.

### **1. CALL TO ORDER**

The meeting was called to order at 3:03 by Chairman Fink, who announced that a quorum was present.

### **2. APPROVAL OF MINUTES**

The minutes of the October 10, 2006 regular meeting were approved as written. The minutes of the October 24 Special meeting were approved as written.

### **3. PUBLIC INPUT**

Richard Vernon of the Royal Highlands neighborhood commented that the signs placed in the run-up area were not having the intended effect, as aircraft are still flying over his home. The Police helicopters were complying with the recommended procedure. Tussey responded that he would increase his efforts to disseminate the "considerate flying" message.

Buzz Gibbs reported that the Kearny Mesa Planning Group would be reviewing for substantial conformance two buildings of 6 and 8 stories in the Kearny Mesa area at the next meeting.

### **4. DEPUTY DIRECTORS REPORT**

Mike Tussey reported that he would be e-mailing the members of the Committee soon regarding the five year Airport Capital Improvement Plan, which is submitted to the FAA each year.

#### Capital Projects

Three Requests for Council Action are currently processing for the SDM Electrical Project, the SDM Fence Project and the MYF 28L Blastpad.

The EAA lease is also processing.

City Council has met in closed session to consider exclusive negotiations with Corporate Helicopters for the northwest corner of Montgomery Field.

The runway lights have become inoperative at Brown Field, creating an emergency situation there.

A recent court ruling on the City's Multiple Species Conservation Plan may delay our vernal pool restoration project. A vernal pool survey is being planned on the west side of Montgomery Field to identify land that would be free for development.

An RFQ is being prepared for 25 acres at Brown Field located between the tower and the Customs area. Mr. Tussey introduced Real Estate Assets Director Jim Barwick who stated that developers are being invited to submit ideas on the area or they may submit an interest in an area larger than those 25 acres. The use of the area will be aviation related.

Mr. Tussey reported that several applicants had expressed an interest in the vacancy on the Committee. The candidates will be reviewed by upper management.

A report on the AOPA watch program has been deferred until the next meeting.

Chuck McGill reported that there is no NOTAM for the Sunroad tower and the published approach minimums have not changed. Tom Story of Sunroad Development said that a NOTAM was issued when the crane was there and he expected that one would be issued for the building when the crane was removed. He suspects the NOTAM for the crane is still in effect. Montgomery Operations will file a NOTAM for the building. MYF Operations issued a NOTAM shortly thereafter.

Rick Beach distributed a brochure on airport land use planning in California.

3:30 p.m. The meeting was recessed until Jim Waring's arrival.

4:09 p.m. The meeting was re-convened.

## **5. OLD BUSINESS**

### **Sunroad Spectrum**

Mike Tussey introduced Deputy Chief Jim Waring. Mr. Waring began discussion on the Sunroad project by saying that he believes the City was acting in conformance to existing regulations and policy when it issued the building permit for the 12 story building. Balance needs to be found when considering competing issues around airports. Many FAA restrictions preclude non aviation land uses that could produce revenue for the City. When land is scarce, land uses need to be intensified.

There was discussion regarding the timing of obstruction analyses for the building. Rick Beach said the building reached 180 feet on August 11, the day that the FAA issued its response to the Form 7460-1 review as a 160 foot building.



Tom Story, Vice President for Development of Sunroad Enterprises, said that when it became known that 180 feet was going to be a hazard, they considered stopping at 160 feet but they would have had to redraw the plans. They decided not to amend the plans out of financial consideration. Sunroad's rights are fully vested. He believes the hazard is mitigated through the NOTAM and by raising the approach minimums. Mr. Story stated that the project was in full compliance with the City requirements.

Rick Beach said similar decisions that have been made by the City that have the effect of reducing the utility of airports and the air transportation system. The next two Sunroad buildings will be 20 feet and 40 feet taller, respectively. Buzz Gibbs reported that Sunroad 14 is in Development Services being reviewed for substantial conformance.

Chuck McGill said the bottom line is the building interferes with safe operation of aircraft and should never have been built that high. He thinks it should be lowered.

John Serrano of the City Attorney's office said the issue might involve vested rights attaching to construction permits and that those would have to be weighed against the safety concerns of the airport users.

#### Holiday Luncheon

Terry Price announced that the holiday luncheon for the Committee would be at the 94<sup>th</sup> Aero Squadron on December 12 at 1:30 p.m. The Committee will have a regular meeting on December 12 at 3 p.m.

#### 6. NEW BUSINESS

None

#### 7. ANNOUNCEMENTS

#### 8. ADJOURNMENT

The meeting was adjourned at 5:23 p.m. The next meeting will be held at Montgomery Field on December 12 at 3:00 p.m.

#### 9. ACTIONS:

There were no actions taken by the Committee today.

Respectfully submitted,

Terry Price

# Exhibit 34

November 21, 2006

Joe Harris  
Chief Specialist Inspector  
City of San Diego  
Development Services Department  
9601 Ridgehaven Ct., Ste. 220  
San Diego, CA 92123

4445 Eastgate Mall  
Suite 400  
San Diego, California  
92121  
(858) 362-8500  
Fax: (858) 362-8448

Re: Centrum 12 Office Tower, 8620 Spectrum Center Blvd.

Dear Mr. Harris:

Sunroad requests authorization from the Development Services Department to install roofing on the Centrum 12 building located at 8620 Spectrum Center Blvd. The Stop Work Notice issued on October 27, 2006 has so far delayed our construction completion date by 20 days. It is critical that Sunroad be allowed to complete the roof on this structure as soon as possible to protect the existing and in-progress construction work and materials that are being installed in the lower 160 feet of the building and to avoid further delay of our project.

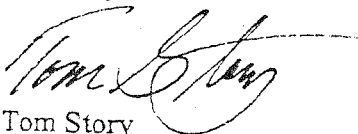
Specifically, Sunroad requests authorization to accomplish the following work that is the minimum necessary to make the roof waterproof:

- 1) Fireproof the elevator penthouse
- 2) Erect scaffolding around the elevator penthouse
- 3) Installation of mechanical and electrical roof curbs
- 4) Framing of the elevator penthouse
- 5) Installation of sheet metal flashing against penthouse framing
- 6) Plastering the elevator penthouse
- 7) Removal of scaffolding upon completion of plastering work
- 8) Installation of roofing at penthouse and building
- 9) Coping at roof parapet

While we clarify our position with the FAA, we believe it prudent that Sunroad be allowed to protect our existing investment in order to minimize the cost and/or liability to the City should Sunroad determine that we must seek compensation for any incurred damages caused by the stop work order.

Thank you for your consideration in this most urgent matter.

Sincerely,



Tom Story  
Vice President, Development

Cc: Marcela Escobar-Eck

# Exhibit 35

RECEIVED

Office of  
The City Attorney  
City of San Diego

DEC 01 2006

DEVELOPMENT SERVICES

MEMORANDUM

DATE: December 1, 2006  
TO: Jim Waring  
FROM: City Attorney  
SUBJECT: Sunroad Enterprises, Inc. Centrum I Building Stop Work Notice

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This memorandum is to address the request made by Sunroad Enterprises, Inc. ("Sunroad") at the November 30, 2006 meeting with Land Use & Economic Development Department ("Department") staff and the City Attorney's Office. Specifically, Sunroad has requested the City lift the Stop Work Notice presently imposed upon Sunroad's Centrum I building near Montgomery Field to allow Sunroad to complete roof construction on the Centrum I Building. The City Attorney specifically advises the Department make no change to the status of the Stop Work Notice.

As you are aware, the City Attorney's office is currently working with the California Department of Transportation ("DOT") to undertake proceedings to abate the threat to public safety created by the height of the Sunroad Centrum I Building. At its present height of 180 feet, the building is both a public nuisance and violates the California Government Code and the State Aeronautics Act. The City Attorney's Office does not believe the mere possibility of placing a "localizer device" at Montgomery Field at some future date (provided the FAA approves), addresses the immediate and long term safety needs of the City. A mere suggestion of a possible solution to the current problem certainly does not warrant any change of status to the current Stop Work Order.

The DOT, Aeronautics Division, who is tasked with protecting people and property on the ground from the consequences of near-airport aircraft accidents, has specifically requested the Stop Work Order not only be invoked, but that the City move forward with permit revocation procedures. For all of these reasons, it is imperative that there be no change to the Stop Work Order whatsoever. Rather, Sunroad may proceed with its administrative remedies if it believes a rescission of the Stop Work Order is warranted.

  
Michael J. Aguirre, City Attorney

Cc: Honorable Mayor and City Council

# Exhibit 36



CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
DEPARTMENT

# NOTICE

OWNER'S OR PERMITTEE'S NAME

JOB ADDRESS

CENSUS TRACT NO.

PERMIT NUMBER

PLAN FILE NUMBER

CONTRACTOR

MAIL ADDRESS FOR

☐ OWNER, OR☐ CONTRACTOR☐ VIOLATION**READ**☒ **STOP WORK**

**REVERSE  
SIDE**

☐ NO PERMIT - REMOVE CONSTRUCTION, OR OBTAIN PERMIT AND MAKE ANY WORK COMPLY WITH BUILDING LAWS. (See comments on reverse side regarding penalty fees).☐ CONSTRUCTION NOT IN ACCORDANCE WITH APPROVED PLANS AND PERMIT MAKE EXISTING WORK COMPLY WITH APPROVED PLANS AND PERMIT OR REMOVE IT.☐ CALL ZONING DIVISION AT (619) 448-5000, CONCERNING VIOLATION OF ZONING REGULATION LISTED BELOW.☐ CONTACT INSPECTOR AND ARRANGE FOR APPOINTMENT. (See telephone number below)☐ CORRECTIONS LISTED BELOW MUST BE MADE BEFORE WORK CAN BE APPROVED.☐ PAY REINSPECTION FEE (See back); THEN ☐ CALL FOR REINSPECTION AT (858) 581-71☐ WORK DESCRIBED BELOW HAS BEEN INSPECTED AND IS APPROVED.**NOTE:**PRESENT THIS NOTICE WHEN  
MAKING APPLICATION FOR PERMIT☒ CORRECTIONS REQUIRED☐ PARTIAL APPROVAL

*See stop work notice dated 10/27/06*

*This notice is to change the 17' to the  
top 20'*

SR042

CONFIDENTIAL

THE ACTIONS OR CORRECTIONS INDICATED ABOVE ARE REQUIRED WITHIN 24 DAYS. THE  
SAN DIEGO MUNICIPAL CODE REQUIRES PENALTY FEES WHEN WORK HAS BEEN STARTED WITHOUT PERMIT.

NAME OF INSPECTOR (PRINT)

INSPECTOR'S SIGNATURE

OFFICE TEL. NO.

DATE

<input checked="" type="checkbox"/>	BUILDING
<input type="checkbox"/>	ELECTRICAL
<input type="checkbox"/>	HEATING
<input type="checkbox"/>	PLUMBING
<input type="checkbox"/>	REFRIGERATION
<input type="checkbox"/>	COMBINATION
<input type="checkbox"/>	SIGNS
<input type="checkbox"/>	MOBILE HC

# Exhibit 37



12/15/04

Exempt from filing fees  
Gov.Code §6103

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Case No.

COMPLAINT FOR ABATEMENT  
OF PUBLIC NUISANCE; PETITION  
FOR WRIT OF MANDATE  
[CCP §1085]; VIOLATION OF  
UNFAIR PRACTICES ACT;  
INJUNCTION AND OTHER  
EQUITABLE RELIEF

FOR WRIT OF MANDATE  
[CCP §1085]; VIOLATION OF  
UNFAIR PRACTICES ACT;  
INJUNCTION AND OTHER  
EQUITABLE RELIEF

Judge:  
Dept:  
Trial Date: Not Yet Set  
Complaint Filed:

Complaint Filed:

20  
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## 24

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1 Government Code § 38773, 38773.1, 38773.5 and 50485.2; and San Diego Municipal Code  
2 §§ 11.0210, 121.0302(b)(4) and 121.0314, to obtain a preliminary injunction, permanent  
3 injunction, civil penalties, and other equitable relief as a result of Defendants SUNROAD  
4 CENTRUM, L.P., a California Limited Partnership ("Sunroad Centrum"), SUNROAD  
5 ASSET MANAGEMENT, INC., a California Corporation ("Sunroad Asset"), and  
6 SUNROAD ENTERPRISES' (hereinafter collectively referred to as "Sunroad"), violations of  
7 California law and the San Diego Municipal Code. The City also petitions the Court pursuant  
8 to Code of Civil Procedure §1085 for an order compelling the California Department of  
9 Transportation, Aeronautical Division ("DOT") to enforce the State Aeronautics Act (Pub.  
10 Res. Code §21001 et seq.) as required by law.

11 2. The People bring this action pursuant to California Business and Professions  
12 Code §§17203, 17205, and 17206 to obtain a preliminary injunction, permanent injunction,  
13 civil penalties, fines, costs, restitution and other equitable relief as a result of Sunroad's  
14 violation of California Unfair Practices Act.

15 3. More specifically, the People and the City (collectively "Plaintiffs") seek to  
16 enjoin the Sunroad Defendants, and each of them, from continuing to construct a twelve (12)  
17 story commercial office building ("Sunroad Centrum I Building") located 0.7 nautical miles  
18 ("NM") from the City's Montgomery Field Airport ("Montgomery Field"). The Sunroad  
19 Centrum I Building has been determined by the Federal Aviation Administration ("FAA") to  
20 be a hazard to air navigation at Montgomery Field. As a hazard to air navigation, the Sunroad  
21 Centrum I Building, not only poses a serious threat to the health and safety of the citizens of  
22 the City and all who utilize Montgomery Field, the existence of a "hazard" at or near  
23 Montgomery Field jeopardizes the City and County of San Diego's ("County") continued  
24 receipt of millions of dollars of federal and state airport grant funds presently allocated to the  
25 County for all airports within the County, including Montgomery Field.

26 4. At all times mentioned herein, the omission or commission of acts by the  
27 Sunroad Defendants, and each of them, occurred within the territorial limits of the City.  
28 Venue of this action in the County of San Diego is mandated, therefore, by California Code of

1 Civil Procedure §394.

2 **BACKGROUND**

3 5. The City is the owner and operator of Montgomery Field, a general civil  
4 aviation airport within the City limits, located in the Kearny Mesa area of the City.  
5 Montgomery Field is home base to approximately 600 aircraft and offers a 3400 foot lighted  
6 runway served by an Instrument Landing System ("ILS"), a 3,400 foot parallel runway, and a  
7 3,400 foot crosswind runway, monitored by a central air traffic control tower. Montgomery  
8 Field is open to the public and presently operates daily from 6:00 a.m. to 9:00 p.m.  
9 Montgomery Field shares its airspace with Marine Corps Air Station Miramar and San Diego  
10 International Airport at Lindberg Field.

11 6. The Defendant Sunroad Centrum Partners, LP, ("Sunroad Centrum") is a  
12 California limited partnership, doing business in the State and within the City. Sunroad  
13 Centrum's business address is 445 East Gate Mall, Suite 400, San Diego, California 92121.

14 7. The Defendant Sunroad Asset Management, Inc. ("Sunroad Asset") is a  
15 California Corporation, whose business address is 445 East Gate Mall, Suite 400, San Diego,  
16 California 92121. The City is informed and believes, and thereupon alleges, that Sunroad  
17 Asset is the Managing Partner of Sunroad Centrum.

18 8. The Defendant Sunroad Enterprises ("Sunroad Enterprises"), is a real estate  
19 development and investment company, whose business address is 445 East Gate Mall, Suite  
20 400, San Diego, California 92121. The true nature of Sunroad Enterprise's business status is  
21 presently unknown to Plaintiffs. Plaintiffs are informed and believe and thereupon allege that  
22 Sunroad Enterprises is the parent company, or holding company, for both Sunroad Centrum  
23 and Sunroad Asset. Plaintiffs will amend this Complaint to allege Sunroad Enterprise's true  
24 business status when such becomes known to Plaintiffs. Sunroad Centrum, Sunroad Asset,  
25 and Sunroad Enterprises are hereinafter collectively referred to as "Sunroad."

26 9. The Respondent California Department of Transportation, Division of  
27 Aeronautics ("DOT") is the State agency charged with the duty to foster and promote the  
28 development of a safe, efficient, dependable, and environmentally compatible air

1 transportation system and to administer the provisions of the California Aeronautics Act,  
2 Public Utilities Code ("PUC") § 21001 et seq. The DOT administers noise regulation and land  
3 use planning laws that foster compatible land use around airports and encourages  
4 environmental mitigation measures to lessen noise, air pollution, and other impacts caused by  
5 aviation. The DOT is directly charged with the duty to protect persons and property on the  
6 ground over which an air hazard is known to exist.

7 10. The true names or capacities, whether individual, corporate, associate, or  
8 otherwise, of respondents and defendants DOE 1 through 50, are unknown to Plaintiffs, who  
9 therefore sues such defendants by such fictitious names. Plaintiffs will amend this complaint  
10 to show the true names and capacities of the DOE respondents and defendants when such has  
11 been ascertained. Plaintiffs are informed and believe and thereupon allege, that each  
12 respondent or defendant designated as a DOE is responsible in some manner for the acts,  
13 omission, and damages herein alleged. Plaintiffs are further informed and believe certain City  
14 agents may be cooperating and colluding with Defendants, and each of them. Therefore,  
15 Plaintiffs will further amend this complaint to add these persons as DOE Defendants, should  
16 such prove necessary.

17 11. Plaintiffs are informed and believe, and thereupon allege, that at all times  
18 herein mentioned each of the respondents or defendants was a parent company, associated  
19 business entity, managing business entity, agent, employee or authorized representative of the  
20 remaining defendants, and in doing the things hereinafter alleged, was acting within the  
21 course and scope of such employment, or representative capacity.

22 12. In or about February 11, 2005, Sunroad Centrum made application to the  
23 City's Development Services Department ("DSD") for a permit to construct a 12 story  
24 206,000 square foot commercial office building with subterranean parking ("Sunroad  
25 Centrum I Building" or "Project 64541") on property owned or controlled by Sunroad known  
26 by San Diego County Tax Assessor Parcel Numbers ("APN") 369-220-51 through 369-220-  
27 73 (hereinafter the "Project Site").

28 ///

1           13.     The Project Site is approximately 0.7 NM of the City's Montgomery Field  
2 airport within Planning Area I-A of the City's New Century Center Master Plan, and within  
3 the City's Kearny Mesa Community Planning area.

4           14.     The Sunroad Centrum I Building is actively marketed by Sunroad as the  
5 "tallest building" in Kearny Mesa, "capped by a great architectural roof element reaching for  
6 the sky." Sunroad claims two additional office buildings, one towering 14 stories to  
7 approximately 200 feet above ground level ("AGL"), and the other reaching 20 stories to  
8 approximately 235 feet AGL, are planned and will complete the complement of "high rises"  
9 surrounding the City's Montgomery Field. All of these buildings violate the height  
10 restrictions established by the FAA for buildings near civil airports, such as Montgomery  
11 Field.

12           15.     Pursuant to the City's Municipal Code, Chapter 11 (Land Development  
13 Procedures), Article 2, §112.0501, applications for land development permits are processed in  
14 accordance with one of five discretionary decision processes. The subject matter of the  
15 development application determines the process that shall be followed for a particular permit  
16 application. In this instance, based upon the terms of the previously approved New Century  
17 Center Master Plan, the Sunroad Centrum I Building permit application was processed under  
18 a "Process Two" substantial conformance review designation. Process Two allows an  
19 application to be approved, conditionally approved, or denied by the City's DSD staff without  
20 review by the City's Planning Commission or approval by the City Council. In this case, the  
21 Sunroad Centrum application for the Sunroad Centrum I Building was reviewed for its  
22 substantial conformance with the previously approved New Century Center Master Plan. On  
23 or about February 10, 2006, the Sunroad Centrum I Building was found to be in substantial  
24 conformance with the New Century Center Master Plan. Plaintiffs are informed and believe  
25 construction of the Sunroad Centrum I Building commenced shortly thereafter, in or about  
26 March 2006.

27     ///

28     ///

1           16. Title 14 of the Code of Federal Regulations, Chapter I (Federal Aviation  
2 Administration, Department of Transportation) Subchapter E, Part 77 (Objects Affecting  
3 Navigable Airspace) (hereinafter "Part 77"), establishes standards for determining  
4 obstructions in navigable airspace, and sets forth reporting requirements for proposed  
5 construction that would affect the navigable airspace at or near airports.

6           17. Pursuant to Subpart "B" of Part 77, each person proposing any kind of  
7 construction within critical horizontal distances of airport runways as established by the  
8 Federal Aviation Administration ("FAA") must provide notice of any proposed construction  
9 ("Notice") to the FAA setting forth the specific, location, height, and other dimensions of the  
10 proposed construction. The purpose of the Notice is to allow the FAA the opportunity to  
11 evaluate the effect of the construction on the operational procedures of the airport and the  
12 possible hazardous effect of the proposed construction on air navigation.

13           18. Pursuant to Part 77, §77.17, Notice to the FAA must be submitted at least 30  
14 days before any application for a building construction permit is made. In the case of the  
15 Sunroad Centrum I Building, therefore, Sunroad should have provided Notice to the FAA in  
16 or before February 2005 of its plan to apply for a permit to construct the Sunroad Centrum I  
17 Building. However, Plaintiffs are informed and believe, and thereupon allege, it was not until  
18 April of 2006, after construction was fully underway on the Sunroad Centrum I Building, that  
19 Sunroad first contacted the FAA. Plaintiffs are informed and believe, and thereupon allege  
20 that Sunroad's notice to the FAA reluctantly came about as a result of strenuous objection to  
21 the building's construction by pilots, the operators of Montgomery Field, and the City's  
22 Airport Advisory Committee.

23           19. Plaintiffs are informed and believe and thereupon allege that on or about April  
24 24, 2006, the FAA responded to Sunroad's Notice and issued Aeronautical Study No 2006-  
25 AWP-638-OE notifying Sunroad the FAA had conducted an aeronautical study of the  
26 Sunroad Centrum I Building in accordance with the provisions of 49 U.S.C.A. 44718 and Part  
27 77 ("First FAA Determination"). The First FAA Determination found the Sunroad Centrum I  
28 Building at 180 feet AGL exceeded FAA airport obstruction standards. The FAA concluded

1 the building would, therefore, have an adverse physical or electromagnetic interference effect  
2 upon navigable airspace or on the navigation facilities located at Montgomery Field. The  
3 FAA notified Sunroad that any height exceeding 160 feet AGL constituted a hazard. The  
4 FAA therefore issued a "Notice of Presumed Hazard" to Sunroad. The FAA advised that  
5 pending resolution of the building height issue, no construction of the Sunroad Centrum I  
6 Building should proceed, not even at a reduced elevation.

7 20. Plaintiffs are informed and believe, and thereupon allege, that despite the First  
8 FAA Determination concluding the Sunroad Centrum I Building should not be allowed to  
9 proceed, Sunroad ignored the FAA's directive and proceeded to frame the Sunroad Centrum  
10 Building to its maximum planned height of 180 feet AGL.

11 21. Plaintiffs are informed and believe that following the First FAA Determination  
12 and issuance of the FAA Notice of Presumed Hazard in or about June of 2006, Sunroad  
13 submitted a second Notice to the FAA falsely stating the plans for the Sunroad Centrum I  
14 Building had been modified reducing the maximum building height to 160 feet AGL.  
15 Plaintiffs are informed and believe, and thereupon allege, this was never the case as  
16 construction plans for the building clearly indicated a completion height of 180 feet AGL, and  
17 no amendment to Sunroad's building permit was ever processed by City's DSD as would  
18 have been required by the City's Municipal Code.

19 22. On or about June 27, 2006, based on this false and misleading information, the  
20 FAA issued Aeronautical Study No 2006-AWP-3876-OE, a second determination regarding  
21 the Sunroad Centrum I Building ("Second FAA Determination"). Based on the erroneous  
22 information that the building had been modified to a maximum height of 160 feet AGL, the  
23 Second FAA Determination found the building would no longer exceed obstruction  
24 standards and would not be a hazard to air navigation, provided the building was marked and  
25 lighted in accordance with FAA regulations. The Second FAA Determination notified  
26 Sunroad that as a condition of the FAA's finding of "no hazard to air navigation" Sunroad  
27 would be required to notify the FAA at least 10 days prior to the commencement of actual  
28 construction on the building, and again within 5 days after the construction had reached its

1 greatest height of 160 feet AGL. The Second FAA Determination informed Sunroad that any  
2 change in height would void the "no hazard" determination. Sunroad was further informed  
3 that the maximum height of 160 feet AGL included the height of temporary construction  
4 equipment, such as cranes used during the actual construction of the building. Sunroad was  
5 informed the equipment must not exceed the overall height of 160 feet AGL without a  
6 separate notice to the FAA. Despite the Second FAA Determination's warnings, Sunroad  
7 proceeded to frame the building to its maximum planned height of 180 feet AGL, and to erect  
8 construction cranes that exceeded 180 feet AGL without any notification to the FAA  
9 whatsoever.

10 23. In or about August, 11, 2006, the FAA completed a third study of the Sunroad  
11 Centrum I Building, aeronautical study No. 2006-AWP-4601-OE ("Third FAA  
12 Determination"). The Third FAA Determination again assessed the building at 180 feet  
13 AGL—the true height of the building as framed by Sunroad. The FAA found the Sunroad  
14 Centrum I Building at its actual height of 180 feet AGL posed a substantial adverse effect on  
15 the safe and efficient utilization of the navigable airspace by aircraft and the operation of air  
16 navigations at the City's Montgomery Field.

17 24. More specifically, the Third FAA Determination found the Sunroad Centrum I  
18 Building, at its true height of 180 feet AGL and 3,424 feet from Runway 10L's physical  
19 approach end, exceeded the FAA horizontal surface Obstruction Standards of Part 77 applied  
20 to Montgomery Field by 19 feet AGL. The FAA further determined the height of the building  
21 at 180 feet AGL would result in the need to change the minimum instrument flight altitudes  
22 within the Montgomery Field terminal area and change the controlling obstacle, circling, and  
23 other normal use operations applied to the public air traffic use at Montgomery Field.

24 25. The Third FAA Determination also considered and analyzed the impact on  
25 existing and proposed arrival, departure, and en route procedures for aircraft operating under  
26 both visual flight rules and instrument flight rules at Montgomery Field. It studied the impact  
27 on all existing and planned public use airports, military airports and aeronautical facilities in  
28 the surrounding area, as well as the cumulative impact resulting from the studied obstruction



1 when combined with the impact of other existing or proposed structures in the vicinity. The  
2 Third FAA Determination concluded the Sunroad Centrum I Building would have a  
3 substantial adverse effect on air navigation at Montgomery Field and, in fact, constituted a  
4 Hazard to air traffic. The FAA, therefore, issued an FAA Hazard Determination ("Hazard  
5 Determination"). Sunroad did not appeal the FAA's Hazard Determination. The FAA's  
6 Hazard Determination became final on September 20, 2006.

7 26. Plaintiffs are informed and believe and thereupon allege that had the City been  
8 provided with the FAA's Hazard Determination over a year earlier, at the time of Sunroad's  
9 permit application, or at the time of the City's Kearny Mesa Community Planning Group  
10 review of the building for substantial compliance, the City and Community Planning Group  
11 would not have recommended approval of the Process Two substantial conformance review  
12 for the Sunroad Centrum I Building.

13 27. On or about September 14, 2006, the DOT contacted Sunroad to advise it had  
14 been made aware of the FAA's Hazard Determination and violation of Part 77. As such, the  
15 DOT advised Sunroad the construction of the Sunroad Centrum I Building was in violation of  
16 California Public Utilities Code §21659 ("PUC §21659").

17 28. PUC §21659 specifically prohibits any person from constructing any structure  
18 which exceeds the obstruction standards related to objects affecting navigable airspace  
19 contained in Part 77 unless a permit allowing the construction is issued by the DOT. The  
20 DOT advised Sunroad that unless they received a permit from the DOT, it would be unlawful  
21 to proceed with construction of the Sunroad Centrum I Building.

22 29. On or about September 18, 2006, Sunroad, by and through its attorneys,  
23 corresponded with the DOT objecting to the DOT's request for Sunroad to apply for a DOT  
24 permit pursuant to PUC §21659(a). Sunroad asserted no permit was required because the  
25 FAA had, as a precaution, already raised the required height circling limits for Montgomery  
26 Field; because the building received substantial compliance approval by the City; and because  
27 the building did not technically fall within the City's Airport Environs Overlay Zone  
28 ("AEOZ"). Sunroad objected that both the DOT and the City lacked any jurisdiction over the

1 building.

2 30. On or about September 29, 2006, the DOT again notified Sunroad that the  
3 construction of the Sunroad Centrum I Building was in violation of PUC §21659(a). The  
4 DOT warned Sunroad that without issuance of a permit by the DOT, continued construction  
5 of any part of the building exceeding 160 feet AGL was unlawful. The DOT further notified  
6 Sunroad that if construction proceeded in violation of PUC §21659, Sunroad was "proceeding  
7 at [its] own risk" and would assume all liability for any accident that might occur.

8 31. On or about October 3, 2006, Sunroad, by and through its attorney,  
9 corresponded with the DOT and agreed, under protest, to apply for the required DOT permit;  
10 however, Plaintiffs are informed and believe, and thereupon allege, that no permit application  
11 was ever completed nor submitted to the DOT by Sunroad as promised. Even so,  
12 construction on the Sunroad Centrum I Building continued unimpeded.

13 32. On or about October 13, 2006, the DOT again corresponded with Sunroad  
14 requesting Sunroad submit the appropriate application to the DOT within 10 days to enable  
15 the DOT to consider the permit request.

16 33. On or about October 19, 2006, after the City received notice from the DOT  
17 that Sunroad had failed to apply for the required DOT permit, and in light of Sunroad's  
18 adamant refusal to halt construction on the Sunroad Centrum I Building, the City Attorney's  
19 Office advised the City's DSD to issue a Stop Work Order to halt construction of the Sunroad  
20 Centrum I Building.

21 34. On or about October 25, 2006, the DOT formally requested in writing that the  
22 City issue a Stop Work Order for the Sunroad Centrum I Building and move forward with  
23 building permit revocation proceedings.

24 35. On or about October 26, 2006, Sunroad, by and through its attorney,  
25 corresponded with the City, again adamantly asserting the Sunroad was not in violation of  
26 Government Code §50485.2, was not in violation of the City's Municipal Code, and was not  
27 required to appeal any determination by the FAA that the building posed a "Hazard."  
28 Sunroad's position remained firm that its right to develop its property and to construct the

1 Sunroad Centrum I Building to its maximum height was a "vested right" arising from a prior  
2 development agreement between Sunroad's predecessor in interest and the City. Sunroad  
3 further asserted that the effect on Montgomery Field was "negligible" as the building only  
4 protruded 17 feet into a 302 foot buffer zone of vertical clearance for the circling approach to  
5 Runway 28R.

6 36. On October 27, 2006, the City issued a Stop Work Order for the Sunroad  
7 Centrum I Building, ordering all work above 160 feet AGL cease until FAA regulations were  
8 met.

9 37. Pursuant to the City's Municipal Code §121.0308, the issuance or granting of  
10 any development permit or construction permit, or approval of any plan, or specification,  
11 does not constitute a permit for, or an approval of, any violation of any of the provisions of  
12 the City's Land Development Code, State or Federal law. Development permits, construction  
13 permits, or inspections presuming to give authority to violate or cancel the provision of the  
14 City's Land Development Code, other City ordinance or law, are invalid.

15 38. Pursuant to the City's Municipal Code §121.0308(b) the issuance of a  
16 development permit or construction permit based on plans specification, and other data does  
17 not prevent the City from stopping building operations that are in violation of the Land  
18 Development Code or any other applicable law.

19 39. Pursuant to the City's Municipal Code §121.0309(a) whenever work is being  
20 performed that is contrary to the provisions of the City's Land Development Code, the City  
21 may order the work stopped by issuing a Stop Work Order. Violations of the Land  
22 Development Code are treated as strict liability offenses, regardless of intent, and may be  
23 abated by criminal or civil injunctive relief.

24 40. On or about November 27, 2006, the DOT Aeronautics Division again  
25 communicated with Sunroad Centrum, reaffirming the DOT's position that a permit was  
26 necessary to allow further construction above 160 feet to continue, restating the DOT's goal  
27 to reduce the height of the Sunroad Centrum I Building to a level not considered "hazardous"  
28 by the FAA. Plaintiffs are informed and believe, and thereupon allege, that Sunroad has

1 steadfastly refused to halt construction of the Sunroad Centrum I Building, despite the clear  
2 and present danger it poses to the health and welfare of the City, its citizens and all those who  
3 rely upon and utilized the City's Montgomery Field, and despite the DOT's consistent  
4 requests to Sunroad to comply with State and Federal law. Due to the imminent danger to the  
5 public at large and all those who utilize Montgomery Field, the City Attorney has determined  
6 the action taken by Plaintiffs herein is necessary to safeguard and protect the citizens of the  
7 City and the financial interest of the City and its airports.

8 **FIRST CAUSE OF ACTION**

9 **(ABATEMENT OF PUBLIC NUISANCE)**

10 41. Plaintiffs reallege and incorporate herein by this reference paragraphs 1  
11 through 40 as fully set forth herein.

12 42. Pursuant to the provisions of the California Airport Approaches Zoning Law  
13 (Gov. Code §50485 et seq.), and more specifically, §50485.4 therein, where there is any  
14 conflict in zoning, or other regulations applicable to height of structures around an airport, or  
15 use of land around an airport, the more stringent regulation (in this case, Part 77 and PUC  
16 §21659), shall govern and prevail over any other provision of law, including, but not limited  
17 to, the City's Municipal Code zoning regulations, if such conflict should exist.

18 43. Pursuant to Government Code §50485.2, if it is found that an airport hazard  
19 exists and endangers the lives and property of users of the airport and occupants of land it its  
20 vicinity, or otherwise reduces the landing, taking off and maneuvering of aircraft utilizing a  
21 public airport, destroying or impairing the utility of the airport and public's investment  
22 therein, such a hazard is deemed a "public nuisance." Therefore, based upon the FAA's and  
23 the DOT's determination that the Sunroad Centrum I Building constitutes a "hazard" to  
24 Montgomery Field, the building, at its current height of 180 fee AGL, is a public nuisance as  
25 a matter of law.

26 44. The Sunroad Centrum I Building also constitutes a "public nuisance" pursuant  
27 to §§3480 and 3491 of the Civil Code, requiring abatement, because it is a "nuisance" that  
28 affects the entire community, although the extent of the annoyance or damage inflicted upon

1 the individuals may be unequal.

2 45. Unless the public nuisance created by the height of the Sunroad Centrum I  
3 Building at 180 feet AGL is abated, and the Sunroad Defendants, and each of them, are  
4 enjoined and ordered to remove any and all of the Sunroad Centrum I Building exceeding 160  
5 feet AGL, or otherwise comply with the requirements set forth by the DOT for construction  
6 of the building, the health, safety and well-being of the citizens of the City, and all those that  
7 rely upon and utilize Montgomery Field, will suffer irreparable damage.

8 46. Plaintiffs have no plan, speedy, or adequate remedy at law and, therefore,  
9 seeks the aforementioned injunctive to abate the public nuisance as authorized by §§ 526 and  
10 731 of the Code of Civil Procedure.

11 47. As more fully set forth herein, the FAA, the DOT, and the City have all given  
12 notice to the Sunroad Defendants, and each of them, requesting the abatement of the nuisance  
13 created by the Sunroad Centrum I Building's violation of Part 77 and intrusion into navigable  
14 airspace, but the Sunroad Defendants, and each of them, have refused, and continue to refuse,  
15 to abate the nuisance.

16 48. For this reason Plaintiffs shall request the Court issue a preliminary and  
17 permanent injunction enjoining the Sunroad Defendants and their agents, servants,  
18 employees, and all persons acting in concert with, or for them, from unlawfully continuing  
19 with the construction of the Sunroad Centrum I Building. Plaintiffs shall also request the  
20 Court issue a mandatory injunction ordering all portions of the Sunroad Centrum I Building  
21 constituting a "hazard" (as determined by the FAA and DOT) be permanently deconstructed  
22 and removed.

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1 SECOND CAUSE OF ACTION

2 (WRIT OF MANDATE )

3 49. Plaintiffs reallege and incorporate herein by this reference paragraphs 1  
4 through 48 as if fully set forth herein.

5 50. The DOT is the duly authorized State agency in charge of airports and is  
6 vested with the authority to enforce the State Aeronautics Act (Pub. Res. Code §21001 et  
7 seq.) As such, the DOT has a clear, present, and ministerial duty to compel Sunroad to  
8 comply with Part 77, Subpart B, of the Code of Federal Regulations and California Public  
9 Utilities Code §21659. California Public Utilities Code §21659 incorporates Part 77 fully by  
10 reference, thereby requiring that, as a matter of State law, no structure which exceeds the  
11 obstruction standards related to objects affecting navigable airspace contained in Part 77 be  
12 allowed unless a permit allowing the construction is issued by the DOT.

13 51. Pursuant to Public Resources Code §21660, the DOT may refuse issuance of a  
14 permit under §21659 if it determines the construction would constitute a hazard to air  
15 navigation or create an unsafe condition for air navigation; however, despite the DOT  
16 repeated request for Sunroad to apply for the required permit, Sunroad has failed to do so, and  
17 the DOT has not taken action to enforce the compliance requirements of the State Aeronautics  
18 Act.

19 52. Pursuant to Public Utilities Code §21253, the DOT is vested with the authority  
20 to enforce, by injunction or other legal process, the State Aeronautics Act, including §21659.  
21 By the DOT's failure to utilize its statutory enforcement power, it is allowing a public  
22 nuisance to continue unabated and to prolong the actual threat to public safety created by the  
23 public nuisance to continue to exist unabated, all to the detriment of the public at large and all  
24 who utilize and rely upon the safe existence and operation of the City's Montgomery Field  
25 airport. Further, the non-compliance with Part 77 jeopardizes the City and County's  
26 continued receipt of Federal and State grant funds necessary for the operation of all airports  
27 within the County.

28 ///

1           53.     The Petitioner City has no plain, speedy and adequate remedy in the ordinary  
2 course of the law, to compel the DOT to exercise its enforcement authority other than the  
3 relief sought in this Petition to mandate the DOT to take the appropriate action to force  
4 Sunroad's compliance with Part 77 and the State's Aeronautics Act. Unless the  
5 aforementioned hazardous condition is removed from the City's Montgomery Field area, the  
6 City, and the citizens it serves, stands to suffer severe and irreparable damage by the threat to  
7 public safety posed by the Sunroad Centrum I Building protruding impermissibly into FAA  
8 airspace near Montgomery Field, and by the threat of loss of Federal and State grant funds  
9 necessary for the operation of Montgomery Field, and other airports within the County.

10           54.     The Petitioner City therefore seeks an order from the Court directing the DOT  
11 to exercise its ministerial duty to enforce compliance with the State Aeronautics Act and Part  
12 77 incorporated by reference therein, and to compel the Sunroad Centrum Building to be  
13 reduced to a height that is not a hazard to the navigable airspace at and around Montgomery  
14 Field.

15                                 THIRD CAUSE OF ACTION  
16                                 (VIOLATION OF UNFAIR PRACTICES ACT)

17           55.     The People reallege and incorporates herein by this reference paragraphs  
18 1 through 48 as if fully set forth herein.

19           56.     As a result of the willful undertaking of unfair, deceptive, untrue and  
20 misleading business acts, and the associated advertising of the Sunroad Centrum I Building,  
21 which the Sunroad Defendants, and each of them knew, or by the exercise reasonable care  
22 should have known, would mislead and deceive the public as to the actual hazard presented  
23 by the Sunroad Centrum I Building's proximity to Montgomery Field and intrusion into  
24 navigable airspace, the Sunroad Defendants have violated the State's Unfair Practices Act  
25 (Business and Professions Code §17000 et seq.)

26           57.     Pursuant to §17203 of the Business and Professions Code, the People are  
27 empowered to halt the unfair business practices conducted by the Sunroad Defendants and  
28 enjoin the Sunroad Defendants, and each of them, from further engaging in such activity in

1 the future.

2 58. As a result of the Sunroad Defendants' unlawful conduct as alleged, the  
3 Sunroad Defendants, and each of them, are subject to civil penalties, disgorgement, and  
4 restitution of any amounts received as a result of their unlawful act as permitted by Business  
5 and Professions Code § 17206.

6 59. Unless enjoined by order of the Court as prayed for herein, the Sunroad  
7 Defendants, and each of them, may, or will, continue their unlawful course of conduct alleged  
8 hereinabove.

9 60. The unlawful conduct, acts and omissions of the Sunroad Defendants in  
10 conducted in violation of the Business and Professions Code, as set forth herein, demonstrate  
11 the necessity and legal basis for granting injunctive relief, ordering restitution to victims and  
12 imposing civil penalties requested by the People herein.

13 **FOURTH CAUSE OF ACTION**

14 **(INJUNCTION)**

15 61. Plaintiffs reallege and incorporate herein by this reference paragraphs 1  
16 through 48 as if fully set forth herein.

17 62. Plaintiffs are informed and believe and thereupon allege that the Sunroad  
18 Defendants are proceeding with the construction of the Sunroad Centrum I Building despite  
19 the City's Stop Work Notice issued to halt any further progress on any part of the building  
20 exceeding 160 feet AGL. Plaintiffs are informed and believe and thereupon allege that the  
21 Sunroad Defendants are also proceeding with pre-construction work for the other two, even  
22 taller, buildings referenced hereinabove. Sunroad's continued construction on the Sunroad  
23 Centrum I Building is in direct violation of the City's Stop Work Notice and is in direct  
24 violation of the DOT's notification that construction must not proceed without a validly  
25 issued DOT permit.

26 63. Plaintiffs are informed and believe that such flagrant acts by the Sunroad  
27 Defendants, and each of them, so gravely affects the public at large in that irreparable and  
28 permanent damage may be inflicted upon the citizens of the City as well as all of those who



1 utilize and rely upon the City's Montgomery Field that the immediate issuance of injunctive  
2 relief is appropriate and necessary.

3 64. Plaintiffs are informed and believe and thereupon allege that Plaintiffs have no  
4 adequate remedy at law for the injuries that could be suffered, other than the relief requested  
5 herein.

6 WHEREFORE, the Petitioners and Plaintiffs pray judgment against Respondents  
7 and Defendants, and each of them, as follows:

8 **FIRST CAUSE OF ACTION**

9 **(PUBLIC NUISANCE)**

10 1. That the Sunroad Centrum I Building at 180 feet AGL be declared a public  
11 nuisance as a matter of law;

12 2. For a temporary restraining order, preliminary and permanent injunction  
13 ordering the Sunroad Defendants, and each of them, to cease construction of the Sunroad  
14 Centrum I Building until such time as the FAA, the DOT, and the City's DSD declares the  
15 plans for the construction of the building to be within Federal and State height restrictions and  
16 other applicable standards for buildings constructed at or near and airport, and more  
17 particularly, at or near the City's Montgomery Field airport;

18 3. For a mandatory injunction requiring Sunroad to deconstruct and remove any  
19 portion of the Sunroad Centrum I Building that is found to be a "hazard" to navigable  
20 airspace at or around Montgomery Field as determined by the FAA, the DOT, and the City's  
21 DSD.

22 4. For a temporary restraining order, preliminary and permanent injunction  
23 prohibiting the Sunroad Defendants, and any of them, from constructing any other building at  
24 or near Montgomery Field without first filing Notice with the FAA, obtaining a "No Hazard  
25 Determination" from the FAA, and/or without first obtaining all necessary permits required  
26 by the FAA, DOT or the City related to the construction of buildings at or near the City's  
27 Montgomery Field airport;

28 ///

- 1           5.     For the cost of the suit, including attorneys fees as permitted by law;  
2           6.     For such other further relief and the Court may deem just and proper.

3                               **SECOND CAUSE OF ACTION**

4                               **(WRIT OF MANDATE)**

5           1.     For an alternative and peremptory writ of mandate ordering the Respondent  
6 DOT comply with the State Aeronautics Act (Pub. Res. Code §21001 et seq.), and  
7 commanding the DOT to exercise the authority vested in it pursuant to Public Utilities Code  
8 §21253 to enforce, by injunction or other legal process, the State Aeronautics Act, including  
9 §21659, and to take all actions necessary to ensure that the Sunroad Centrum I Building is  
10 reduced to a height that is no longer deemed a "hazard" to navigable air space in and around  
11 the City's Montgomery Field airport.

12          2.     For an order commanding the DOT to take immediate action to exercise the  
13 authority vested in it pursuant to Public Utilities Code §21253 to enforce, by injunction or  
14 other legal process, any other act undertaken by Sunroad to construct any other building at or  
15 near the City's Montgomery Field airport that is deemed a "hazard" by the FAA or in any  
16 manner violates the State Aeronautics Act, including §21659 thereof.

17          3.     For cost of suit;

18          4.     For such other further relief and the Court may deem just and proper.

19                               **THIRD CAUSE OF ACTION**

20                               **(UNFAIR PRACTICES ACT)**

21          1.     For a temporary restraining order, preliminary and permanent injunction  
22 ordering the Sunroad Defendants, and each of them, to cease construction of, and leasing of  
23 space in the Sunroad Centrum I Building, or any other building in the New Century Center  
24 Plan area where, pursuant to §17203 of the Business and Professions Code Sunroad's  
25 engagement in these acts are found to violate the State's Unfair Practices Act.

26          2.     For civil penalties of two-thousand-five hundred dollars (\$2,500) for each  
27 violation of Business and Professions Code §17200 as determined by the Court;

28       ///

3. That Plaintiffs recover costs of this suit including attorneys' fees and investigation costs from the Sunroad Defendants and their successors and assigns;

4. That the proceeds obtained by the People be deposited with the appropriate account(s) as required by law, and that the costs of this action , including attorneys' fees and such other costs as the court shall deem proper be awarded to Plaintiffs;

5. That the People be awarded such other and further relief as the nature of the case may require and as the Court deems proper to fully and successfully dissipate the effect of the Sunroad Defendants' unlawful activities in violation of the Unfair Practices Act.

#### FOURTH CAUSE OF ACTION

(INJUNCTION)

1. For a temporary restraining order, preliminary and permanent injunction ordering the Sunroad Defendants, and each of them, to cease construction of the Sunroad Centrum I Building until such time as the FAA, the DOT, and the City's DSD declares the plans for the construction of the building to be within Federal and State height restrictions and other applicable standards for buildings constructed at or near and airport, and more particularly, at or near the City's Montgomery Field airport;

2. For a mandatory injunction requiring Sunroad to deconstruct and remove any portion of the Sunroad Centrum I Building that is found to be a “hazard” to navigable airspace at or around Montgomery Field as determined by the FAA, the DOT, and the City’s DSD.

3. For a temporary restraining order, preliminary and permanent injunction prohibiting the Sunroad Defendants, and any of them, from constructing any other building at or near Montgomery Field without first filing Notice with the FAA, obtaining a "No Hazard Determination" from the FAA, and/or without first obtaining all necessary permits required by the FAA, DOT or the City related to the construction of buildings at or near the City's Montgomery Field airport;

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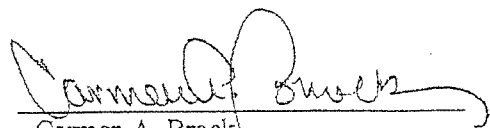
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- 4. For the cost of the suit, including attorneys fees as permitted by law;
- 5. For such other further relief and the Court may deem just and proper.

Dated: December 5, 2006

MICHAEL J. AGUIRRE, City Attorney

By   
Carmen A. Brock  
Deputy City Attorney

Attorneys for Petitioners and Plaintiffs  
The People of the State of California and  
The City of San Diego

# Exhibit 38



## THE CITY OF SAN DIEGO

December 21, 2006

VIA FACSIMILE TO RICHARD D. VAN  
858/362-8448

Mr. Tom Story  
Sunroad Enterprises  
4445 Eastgate Mall, Suite 400  
San Diego, CA 92121

Dear Mr. Story,

Subject: 8620 Spectrum Center Blvd. Approval 303319

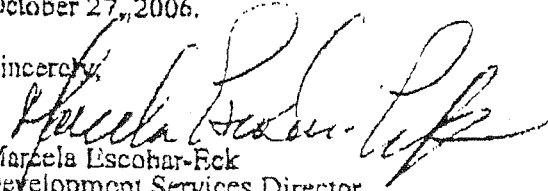
Development Services Department of the City of San Diego has reviewed your letter of request to install the weather proof covering on the 12-story structure mentioned above.

In the interest of saving the structure from damage which could be caused by weather, your request will be allowed for this phase of construction for the items discussed at the field meeting of December 21, 2006 with Joe Harris subject to your concurrence with the terms of this letter.

The "Stop Work Order," issued December 13, 2006, halting work on the top twenty feet (20' Ft) of the structure, shall remain in place.


This is based on our understanding that Sunroad accepts and acknowledges that any work performed from and after the date of the Notice (i.e., October 27, 2006) is at Sunroad's own risk and without any claim against the City. Specifically, Sunroad acknowledges and agrees that neither Sunroad nor its representatives may, under any circumstances, make any claim or assert any argument against the City for any costs or expenses of any type incurred after October 27, 2006 with respect to the work, nor assert in any way that the lifting of the Notice estops the City from pursuing the remedies that may result from the ongoing FAA inquiry. Said another way, whatever rights either party has vis-à-vis the other party will be the rights as they existed on October 27, 2006.

Sincerely,

  
Marcela Escobar-Eck  
Development Services Director

JH/lgb

Accepted and Agreed:

  
Tom Story

12/27/06  
Date

RICHARD VAN

Development Services

1222 First Avenue, 4th Floor - San Diego, CA 92101

DSD0002116

# Exhibit 39

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF AERONAUTICS – M.S.#40

1120 N STREET

P. O. BOX 942873

SACRAMENTO, CA 94273-0001

PHONE (916) 654-4959

FAX (916) 653-9531

TTY (916) 651-6827

*Flex your power!  
Be energy efficient!*

January 19, 2007

Mr. James T. Waring  
Deputy Chief Operating Officer  
Land Use and Economic Development  
Office of the Mayor  
City of San Diego  
202 C Street, 9<sup>th</sup> Floor  
San Diego, CA 92101

Dear Mr. Waring:

The California Department of Transportation (Department), Division of Aeronautics has obtained a copy of the revised Stop Work Notice (Notice) issued by the City of San Diego (City) on December 13, 2006 for the Sunroad Centrum 1 (aka Sunroad Centrum 12) building located at 8620 Spectrum Center Boulevard. We have also reviewed a copy of the December 21, 2006 letter from Ms. Marcia Escobar-Eck of your Development Services Department to Sunroad Enterprises (Sunroad) authorizing construction of the Sunroad Centrum 1 building above the level specified in the Notice. The City's apparent failure to enforce the Notice, which enables the developer to violate State law and seems to disregard public safety, is of great concern to the Department.

In our letter of November 9, 2006, to the Development Services Department, we directly informed the City that any construction of the building above a height of 160 feet Above Ground Level (AGL) was a violation of California Public Utilities Code (PUC) Section 21659, a State law enacted to prohibit hazards near airports. As stated above, the City's December 21, 2006 letter, particularly when reviewed with respect to Sunroad's November 21, 2006, letter to the City requesting many permanent construction features under the pretense of 'weather proofing' the building, makes it difficult to regard the City's actions as anything other than an attempt to undermine State law.

Additionally, while we appreciate that you revised the Notice from halting work in the top 17 feet of the building to the top 20 feet, our review of plans approved by the City show that stopping work in the top 20 feet is still inadequate. The "20 feet" figure was based on data provided by Sunroad to the Federal Aviation Administration for a 180-foot tall building. Twenty feet was the amount the building exceeded the Federal Aviation Administration (and Department) standards, which would have allowed a building that was 160-foot tall. However, the plans approved by the City on February 10, 2006, show that the highest point of the building is approximately 602 feet Above Mean Sea Level, which translates to a true building height of 186 feet AGL. This means that the upper 26 feet of the building constitutes a hazard. As called for by our mission to protect aviation safety, people and property, we are notifying you of this fact, and request that you revise and reissue the Notice so that no work is accomplished in the top 26 feet of the Sunroad Centrum 1 building.



Mr. James T. Waring  
January 19, 2007  
Page 2

The City's attempts to pass liability for the illegal construction on to Sunroad entirely miss the point. This issue is not about who has liability for the hazard, but taking action to remove the hazard so that liability is not an issue. When the facts of the situation show a developer failed to comply with a federal notification regulation (Federal Aviation Regulation Part 77.17), used that violation of federal regulation to obtain local planning and building approval, knowingly began construction of a building determined by a federal agency to be a hazard, constructed parts of the building in violation of State law (PUC Section 21659), and continue to defy State and local attempts to resolve the situation, the reluctance of the City to take the necessary steps to protect its citizenry is a mystery.

As you surely know, the City Attorney of San Diego has filed a complaint against Sunroad on behalf of the City as the necessary first legal step in removing the hazard posed by the Sunroad Centrum 1 building. We ask that you rigorously enforce the Notice, and join with the City Attorney and others united in the interest of public safety, to protect the people of San Diego and local, State, and federal interests in Montgomery Field airport for which the City has obligated itself. If you have any additional questions or need further assistance, please do not hesitate to contact us at (916) 654-4565 or e-mail at [jeff.brown@dot.ca.gov](mailto:jeff.brown@dot.ca.gov).

Sincerely,

Original Signed by

JEFF R. BROWN  
Aviation Safety Officer

c: Carmen Brock, Deputy City Attorney, City of San Diego  
Honorable Mayor Jerry Sanders  
Ms. Marcela Escobar-Eck, Director, Development Service Department  
San Diego City Council  
FAA Western Pacific Region

# Exhibit 40

## DEPARTMENT OF TRANSPORTATION

DIVISION OF AERONAUTICS – M.S.#40

1120 N STREET

P. O. BOX 942873

SACRAMENTO, CA 94273-0001

PHONE (916) 654-4959

FAX (916) 653-9531

TTY (916) 651-6827



November 9, 2006

Ms. Marcela Escobar-Eck, Director  
Department of Development Services  
City of San Diego  
1222 First Avenue, MS 501  
San Diego, CA 92101-4101

Dear Ms. Escobar-Eck:

The California Department of Transportation (Department), Division of Aeronautics has obtained a copy of the Stop Work Notice (Notice) issued by the City of San Diego (City) on October 27, 2006, for the Sunroad Centrum 1 (aka Sunroad Centrum 12) building located at 8620 Spectrum Center Boulevard. Although release of the Notice appears to have been unnecessarily delayed, the Department appreciates the fact the City took this essential step. However, we must address several potential problems with the Notice.

Our first concern is the Notice only states "FAA regulation must be clarified prior to the continuing construction of the structure". We remind you that the construction of this structure is a violation of California Public Utilities Code (PUC) Section 21659. This violation was made evident to the City in the City Attorney's letter dated October 19, 2006, and in our letters to the developer or the developer's attorney dated September 14, 2006, September 29, 2006, and October 13, 2006, copies of which were provided to City Land Use and Economic Development Department staff either directly or via e-mail.

Additionally, the Notice stipulates that no work is to be done in the top seventeen feet of the structure. The aeronautical studies performed by the Federal Aviation Administration (FAA) on this building project determined that any part of the proposed 180 foot tall structure constructed above 160 feet is considered to be a hazard to air navigation. Any construction over 160 feet is a violation of PUC 21659. That means any construction in the top twenty feet of the building would constitute a hazard and be a violation of State law.

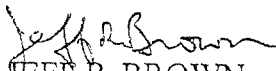
While the current wording in the Notice may have been chosen for brevity or be the result of a misunderstanding, the Notice must reflect the parameters outlined above. Failure to enforce a properly constructed Notice until the PUC Section 21659

Ms. Marcela Escobar-Eck  
November 9, 2006  
Page 2

violation is resolved may expose the City to liability, as a result of authorizing further violation of the State statute.

The Department is sure the City shares our concerns and desire to ensure applicable law is upheld. If you have any additional questions or need further assistance, please do not hesitate to contact us at (916) 654-4565, or via e-mail at: [jeff.brown@dot.ca.gov](mailto:jeff.brown@dot.ca.gov).

Sincerely,



JEFF R. BROWN  
Aviation Safety Officer

c: David Miller, Deputy City Attorney, City of San Diego  
Carmen Brock, Deputy City Attorney, City of San Diego

# Exhibit 41

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF AERONAUTICS – M.S.#40

1120 N STREET

P. O. BOX 942873

SACRAMENTO, CA 94273-0001

PHONE (916) 654-4959

FAX (916) 653-9531

TTY (916) 651-6827

*Flex your power!  
Be energy efficient!*

September 14, 2006

Via Overnight Mail and Facsimile to 858-362-8448

Mr. Craig Bachmann  
Sunroad Enterprises  
4445 Eastgate Mall, Suite 400  
San Diego, CA 92121-1979

Dear Mr. Bachmann:

It has come to attention of the California Department of Transportation (Department), Division of Aeronautics, that the Sunroad Centrum 1 building is under construction and already at its maximum height of 180 feet above ground level. The Federal Aviation Administration (FAA) determined that the Centrum 1 building, at that height, is a hazard to air navigation in their Airspace Determination, dated August 11, 2006, for Aeronautical Study No. 2006-AWP-4601-OE.

Please be advised that California Public Utilities Code (PUC), Section 21659(a), states in pertinent part, that no person shall construct or alter any structure at a height which exceeds the obstruction standards set forth in Title 14 of the Code of Federal Regulations, Part 77, Subpart C (FAR Part 77), relating to objects affecting navigable airspace, unless a permit allowing the construction, alteration or growth is issued by the Department. As detailed in the FAA Airspace Determination referenced above, the Centrum 1 building penetrates the Horizontal Surface, as defined in Section 77.25(a) of FAR Part 77.

Until you receive a permit from the Department, it is unlawful for you to proceed with construction. Section 21019 of the PUC outlines potential punishment for related violations.

Please contact our office upon receipt of this correspondence to discuss the permit application process and the status of the current building structure. We can be reached at (916) 654-4565, or via e-mail at: [jeff.brown@dot.ca.gov](mailto:jeff.brown@dot.ca.gov).

Sincerely,

JEFF R. BROWN  
Aviation Safety Officer

c: Mike Tussey, City of San Diego Airports Director  
San Diego Airports Advisory Committee  
David Miller, City of San Diego  
San Diego Regional Airport Authority  
FAA, AWP 622

# Exhibit 42

PENAL CODE § 373a.

Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney or city attorney or prosecuting attorney to remove, discontinue or abate the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is hereby made the duty of the district attorney, or the city attorney of any city the charter of which imposes the duty upon the city attorney to prosecute state misdemeanors, to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated and removed.



# Exhibit 43

PUBLIC UTILITIES CODE §§ 21659.

(a) No person shall construct or alter any structure or permit any natural growth to grow at a height which exceeds the obstruction standards set forth in the regulations of the Federal Aviation Administration relating to objects affecting navigable airspace contained in Title 14 of the Code of Federal Regulations, Part 77, Subpart C, unless a permit allowing the construction, alteration, or growth is issued by the department.

(b) The permit is not required if the Federal Aviation Administration has determined that the construction, alteration, or growth does not constitute a hazard to air navigation or would not create an unsafe condition for air navigation. Subdivision (a) does not apply to a pole, pole line, distribution or transmission tower, or tower line or substation of a public utility.

(c) Section 21658 is applicable to subdivision (b).

# Exhibit 44



THE CITY OF SAN DIEGO

RECEIVED

JAN 24 2007

DEVELOPMENT SERVICES

January 23, 2007

Mr. Jeff R. Brown  
Aviation Safety Officer  
Department of Transportation  
Division of Aeronautics – M.S. #40  
1120 N. Street  
P. O. Box 942873  
Sacramento, CA 94273-0001

Dear Mr. Brown:

Re: Your letter of January 19, 2007

It is clear from reading your letter of January 19, 2007 that I have been remiss in not contacting you sooner. I hope in this letter to set forth certain essential underlying facts and positions.

Most importantly, there is no one in City government, whether in the Mayor's Office, the City Attorney's Office or the City Council that does not take issues of public safety very seriously. The Mayor consistently states that the primary function of City government is public safety. The Mayor's Office early on rejected the idea of negotiating or accepting some form of indemnity from Sunroad. Everyone agreed that issues of lives and public safety are not issues to be dealt with in terms of money.

There seems a lot of confusion about the height of the building relative to the Stop Work Order issued by Development Services in October 2006. The building reached its maximum height of 180 feet (596 feet above sea level) in early August 2006. At 596 feet, the building penetrates the Part 77 space by 19 feet, reducing the FAA 300 foot buffer to 281 feet. Nothing has occurred since August 2006 that has increased the building's height, and therefore the level of penetration or risk, since that time. For some reason there continue to be statements that the building has somehow increased in height since the Stop Work. That is not the case and any statements to the contrary are false. The City is in no way trying to "undermine State law."

The regulatory background of the Spectrum project and the subject building is a complex one. During the entitlement phase of the Spectrum project, the Sunroad Building was not in the Airport Environs Overlay Zone or Airport Influence area. This is probably why when the project EIR was circulated in June 1997, no one, including CalTrans made any mention of the airport or building heights. The first time one could argue that Part 77 applied to Sunroad Building Site wasn't until 2004, when the San Diego Regional Airport Authority modified language in the

LAND USE AND ECONOMIC DEVELOPMENT  
202 C STREET, SUITE 9B • SAN DIEGO, CA 92101  
PHONE: 619 235-5716 • FAX: 619 236-7344



DSD0002105

Airport Land Use Compatibility Plan to indicate that "the Airport Influence is also extended to include review of proposed construction, regardless of proximity to an airport." As things stand now, the question of how all these dates and events impact the Sunroad building will be determined by the court. In the interim the Stop Work Order will remain in effect. Nothing will be considered by the City that raises the building's elevation.

Last month, Sunroad approached Development Services for permission to do work that would protect the building from weather. We sent a senior inspector to the site to review the request. He determined that the requested items were appropriate for the security of the building AND that nothing would increase the building's existing height. Based upon that review, we issued a limited waiver for the approved items.

A question was raised today regarding the installation of motors for the internal elevators. The internal elevator is needed to allow the exterior scaffolding to be removed so the building can be wrapped and interior work continued. Enclosed are pictures which show the building with scaffolding and another picture which show the location of the elevator motor below the 180 foot roofline. Converting to an interior elevator is part of the transition of any building, and most importantly for purposes of this issue has no impact on the 180 feet.

We have been asked why the Department of Development Services does not simply order the top 20 feet of the building removed. The Stop Work Order and the subsequent lawsuit have made such a step redundant. Sunroad has made clear to the City before the lawsuit was filed that it disagreed with the city's legal position. This is why there is a court case. To my knowledge, the issuance of an administrative order to remove the top 20 feet would have no impact on the litigation or the points of contention.

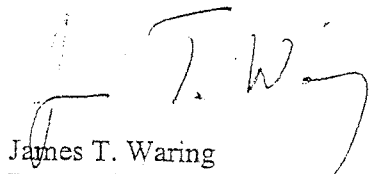
As is so often the case, in hindsight it is hard to understand how a situation like this reached such a point. Certainly, the split regulatory jurisdiction added to the confusion. We have never received a satisfactory answer to the question of why Sunroad agreed with the FAA in the Spring of 2006 to stop at 160 feet and then proceeded to 180 feet. In June of 2006, before the building exceeded 160 feet, the Development Services Department and the City Attorney's Office were in contact with Sunroad's attorney relative to this issue. During that period, before the building exceeded 160 feet, no one advised or suggested to our department that a stop work was needed or appropriate.

Again, the issue here is one of safety. There is disagreement within the flying community as to whether this intrusion is a safety, verses a technical issue. But as a FAA official said to me, on any of these types of matters there is always a difference of opinion among pilots. Regardless, the Airport Director has issued a Notice to Airmen so as to give pilots using Montgomery Field notice of the building location and height while the issue is being resolved.

Page 3  
Mr. Jeff R. Brown  
January 23, 2007

As the case proceeds to trial, please feel free to contact me with any questions or concerns. While there may be good faith differences of opinion on how this matter should ultimately be resolved, rest assured that the Mayor's Office will not accept any resolution not either ordered by the courts or sanctioned by the FAA and the Department of Transportation.

Sincerely,



James T. Waring  
Deputy Chief, Land Use and Economic Development

Enclosure(s)

cc: Michael J. Aguirre, City Attorney  
Carmen Brock, Deputy City Attorney  
Marcela Escobar-Eck, Director, Development Service Department  
City Councilmembers  
FAA Western Pacific Region

DSD0002107

# Exhibit 45

RESOLUTION NO. 2004-0111

A RESOLUTION OF THE BOARD OF THE SAN DIEGO  
COUNTY REGIONAL AIRPORT AUTHORITY TO ADOPT  
THE ANNUAL AMENDMENTS TO THE COMPREHENSIVE  
LAND USE PLANS (CLUPS) FOR SAN DIEGO COUNTY  
AIRPORTS

WHEREAS, the San Diego County Regional Airport Authority ("Airport Authority") has been designated as the Airport Land Use Commission ("ALUC") for all public airports in the County of San Diego ("County"), effective January 1, 2003 (PUB.RES.CODE §21670.3);

WHEREAS, the Airport Authority is lead agency on a project involving proposed annual amendments to the Comprehensive Land Use Plans ("CLUPs") for County public airports ("the CLUP Amendment Project" or "Project");

WHEREAS, in accordance with the CALIFORNIA ENVIRONMENTAL QUALITY ACT, PUB.RES.CODE §§21000, *et seq.* ("CEQA") and its implementing GUIDELINES, 14 CAL.CODE REGS. §§15000, *et seq.* ("CEQA GUIDELINES"), the San Diego County Regional Airport Authority prepared a Draft Environmental Impact Report No. 01-04 (SCH No. 2004011078) ("Draft EIR") to analyze the potential environmental effects of the Annual Amendments to the CLUPs for San Diego County Airports ("CLUP Amendment Project");

WHEREAS, the Draft EIR was circulated for public review and comment for a period of forty-five (45) days, beginning May 19, 2004, and was extended for an additional thirty (30) days to August 5, 2004;

WHEREAS, this substantial public comment period allowed affected communities the opportunity to make their opinions on the proposed project known;

WHEREAS, the Airport Authority prepared responses to all comments received during the comment period on the Draft EIR;

WHEREAS, the Airport Authority also held public meetings on September 9, 2004, and September 13, 2004, to receive and consider public testimony with respect to the CLUP Amendment Project and the completeness and adequacy of proposed Final EIR 01-04;

WHEREAS, on September 13, 2004, the Airport Authority's Strategic Planning Committee ("Committee") directed staff to carry forward a "modified CLUP Amendment Project" for full ALUC Board consideration;



WHEREAS, the Committee indicated a desire to modify the CLUP Amendment Project in a manner that, if approved, would not require the County or any affected cities to make modifications to their general plans as a result of the approval action;

WHEREAS, the modified CLUP Amendment Project ("Proposed Project") consists of the following:

- (1) Designate as "conditionally compatible" all new residences and other noise sensitive uses (*i.e.*, hospitals, schools and libraries) located within the 60-65 dB CNEL noise contours for Borrego Valley Airport, Oceanside Municipal Airport and San Diego International Airport ("SDIA"), provided that the interior noise levels attributable to exterior noise sources not exceed 45 dB CNEL in any habitable room, and that, for all property transactions, appropriate notice be provided to all purchasers, lessees and renters of property which describes the potential for impacts from aircraft noise associated with airport operations;
- (2) Designate as "incompatible" any proposed development project located within the Airport Influence Area ("AIA") for Brown Field, Montgomery Field and Oceanside Municipal Airport that has been determined by the Federal Aviation Administration ("FAA") to be a "hazard" to airspace navigation pursuant to a Federal Aviation Regulation ("FAR") Part 77 determination;
- (3) Replace the San Diego Association of Governments' ("SANDAG") ALUC policies with the Airport Authority's current policies relating to ALUC duties and responsibilities; and
- (4) Make certain technical and legal modifications consistent with State requirements and the Airport Authority's current policies relating to ALUC duties and responsibilities.

WHEREAS, the Airport Authority has set forth, and met by this modified CLUP Amendment Project, certain project objectives, including, but not limited to:

- (1) Establishing consistent land use compatibility requirements relating to sound attenuation and notice for residential and other noise sensitive land uses located within the 60-65 dB CNEL noise contours of County airports;
- (2) Establishing consistent compliance with Federal Aviation Regulations ("FAR") Part 77 requirements in compatibility determinations by incorporating FAR Part 77 requirements into existing CLUPs when such requirements are not already incorporated; and

- (3) Updating the existing County CLUPs by replacing the outdated San Diego Association of Governments ("SANDAG") policies with the new Airport Authority policies.

NOW, THEREFORE, BE IT RESOLVED THAT the Airport Authority approves and adopts for implementation the Proposed Project, as described in Final EIR 01-04, and as modified in this Resolution and in companion Resolution No. 2004-0110, and the related and attached CEQA Findings and Facts in Support of Findings.

The approval and adoption of the modified CLUP Amendment Project is effective immediately upon certification of this Resolution No. 2004-0111.

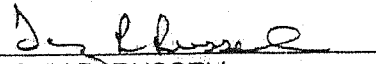
PASSED, ADOPTED AND APPROVED by the Board of Directors of the San Diego County Regional Airport Authority at a regular meeting this 4th day of October, 2004, by the following vote:

AYES: Board Members: Craver, Jacobson, Johnson, Lynch, Nieto, Peterson, Reynolds, Sessom

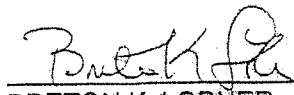
NOES: Board Members: None

ABSENT: Board Members: Inzunza

ATTEST:

  
TONY R. RUSSELL  
DIRECTOR, CORPORATE SERVICES/  
AUTHORITY CLERK

APPROVED AS TO FORM:

  
BRETON K. LOBNER  
GENERAL COUNSEL

**AIRPORT LAND USE COMPATIBILITY PLAN  
FOR MONTGOMERY FIELD**

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# AIRPORT LAND USE COMPATIBILITY PLAN FOR MONTGOMERY FIELD SAN DIEGO, CALIFORNIA

## I. INTRODUCTION

### The Airport Land Use Commission

In 1970, the State of California enacted a law requiring the formation of an Airport Land Use Commission (ALUC) in each county containing a public airport. (CAL.PUB.UTIL.CODE §§21670, *et seq.*) The purpose of the ALUC is to protect “public health, safety and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.” Section 21670.

Section 21675 of the CALIFORNIA PUBLIC UTILITIES CODE requires the ALUC to:

“formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The airport land use compatibility plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years. In formulating an airport land use compatibility plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the planning area.”

The San Diego County Board of Supervisors, by unanimous vote on December 15, 1970, recommended that the San Diego Association of Governments (SANDAG) be designated to assume the responsibilities of an ALUC. A similar resolution was passed and adopted by the Selection Commission of Mayors of the San Diego County Region on February 8, 1971. The Secretary of State was notified of this determination on February 25, 1971, and an acknowledgement of this determination was received from the Secretary of State’s office on March 2, 1971.

SANDAG, as the Airport Land Use Commission for the San Diego Region, approved and adopted Comprehensive Land Use Plans (CLUPs), hereinafter referred to as Airport Land Use Compatibility Plans (ALUCPs), for nine (9) public use airports in San Diego as follows:<sup>1</sup>

---

<sup>1</sup> 2002 and 2004 Legislation amended the STATE AERONAUTICS ACT to refer to airport land use plans as “Airport Land Use Compatibility Plans.” See, e.g., CAL.PUB.UTIL.CODE §21670.1.

1. Borrego Valley Airport;
2. Brown Field;
3. Fallbrook Community Airpark;
4. Gillespie Field;
5. McClellan-Palomar Airport;
6. Montgomery Field;
7. NAS (MCAS) Miramar;
8. Oceanside Municipal Airport; and
9. San Diego International Airport.

The San Diego County Regional Airport Authority (SDCRAA or Airport Authority) was created by state legislation, AB 93, and was signed into law by the Governor of California, Gray Davis, and became effective on January 1, 2003. As required by state legislation, the Authority was created to operate the San Diego International Airport and lead the regional strategic planning effort to meet air transportation service demands in San Diego County. The Airport Authority has also been designated by the Legislature as the new ALUC for all the airports in San Diego County; its membership is comprised of the Airport Authority's nine-member Board. (See, CAL.PUB.UTIL.CODE §21670.3.) Based on this legislative mandate, the Airport Authority has assumed the ALUC responsibilities formerly held by SANDAG, effective January 1, 2003.

State law (Section 21675(a)) provides for one (1) amendment to a compatibility plan per calendar year. In 2004, the ALUC elected to amend the Montgomery Field ALUCP as follows:

1. Replace SANDAG's ALUC policies with the SDCRAA current policies relating to ALUC duties and responsibilities;
2. Designate as "incompatible" any proposed development project that has been determined by the Federal Aviation Administration (FAA) to be a "hazard" to airspace navigation pursuant to a Federal Aviation Regulations (FAR) Part 77 determination; and
3. Make certain minor technical modifications.

This amended ALUCP replaces the ALUCP adopted by SANDAG for Montgomery Field on July 27, 1984, and amended on October 25, 1996.

In addition to this 2004 amendment, the Airport Authority is responsible for adopting new ALUCPs for County airports on or before June 30, 2005. This process will include a more comprehensive update of this ALUCP, and may include, but not be limited to, an update of the Airport's noise contours, an update of the aviation activity forecasts, and possible revisions to the compatibility policies and criteria. The current compatibility plans for County airports (as amended) will remain in place until approval of new compatibility plans by the Airport Authority.

The purposes of the ALUCP are: (i) to provide for the orderly growth of Montgomery Field and the area surrounding the Airport within the jurisdiction of the Commission; and (ii) to safeguard

the general welfare of the inhabitants within the vicinity of the Airport and the public in general. The Plan should permit the reader to determine if a particular land use action affects land within the Airport Influence Area, what criteria and policies apply to the land use action, and what conditions must be implemented in connection with the land use action to permit development that is compatible with airport operations.

Figure 1 identifies the San Diego regional airports and Figure 2 identifies the San Diego International Airport-FAA Terminal Control Area. Figure 3 identifies the projected aircraft produced CNEL noise contours for Montgomery Field and the Airport Influence Area, or the area impacted by current or future airport-related noise, overflight, safety, and/or airspace protection factors from Montgomery Field. Figure 4 provides a land use compatibility matrix and implementation directives for land use within the Airport Influence Area (AIA). Figure 5 provides the flight activity zones for Montgomery Field, and Figure 6 provides the MCAS Miramar and Montgomery Field CNEL noise contours. The narrative includes the plan assumptions, a discussion of compatibility policies and criteria, and a discussion of the ALUC review process. A copy of the current ALUC rules and regulations, including definitions, FAR Part 77 criteria, and a list of references are contained in the Appendices to this Plan.

This Plan addresses the impact on land uses resulting from aircraft operations at Montgomery Field within the City of San Diego. The format of the Plan should permit the reader to determine if a particular property is impacted by aircraft-produced noise or flight activity, what the land use or construction implications are, and what mitigation measures may be used to permit development that is compatible with airport operation.

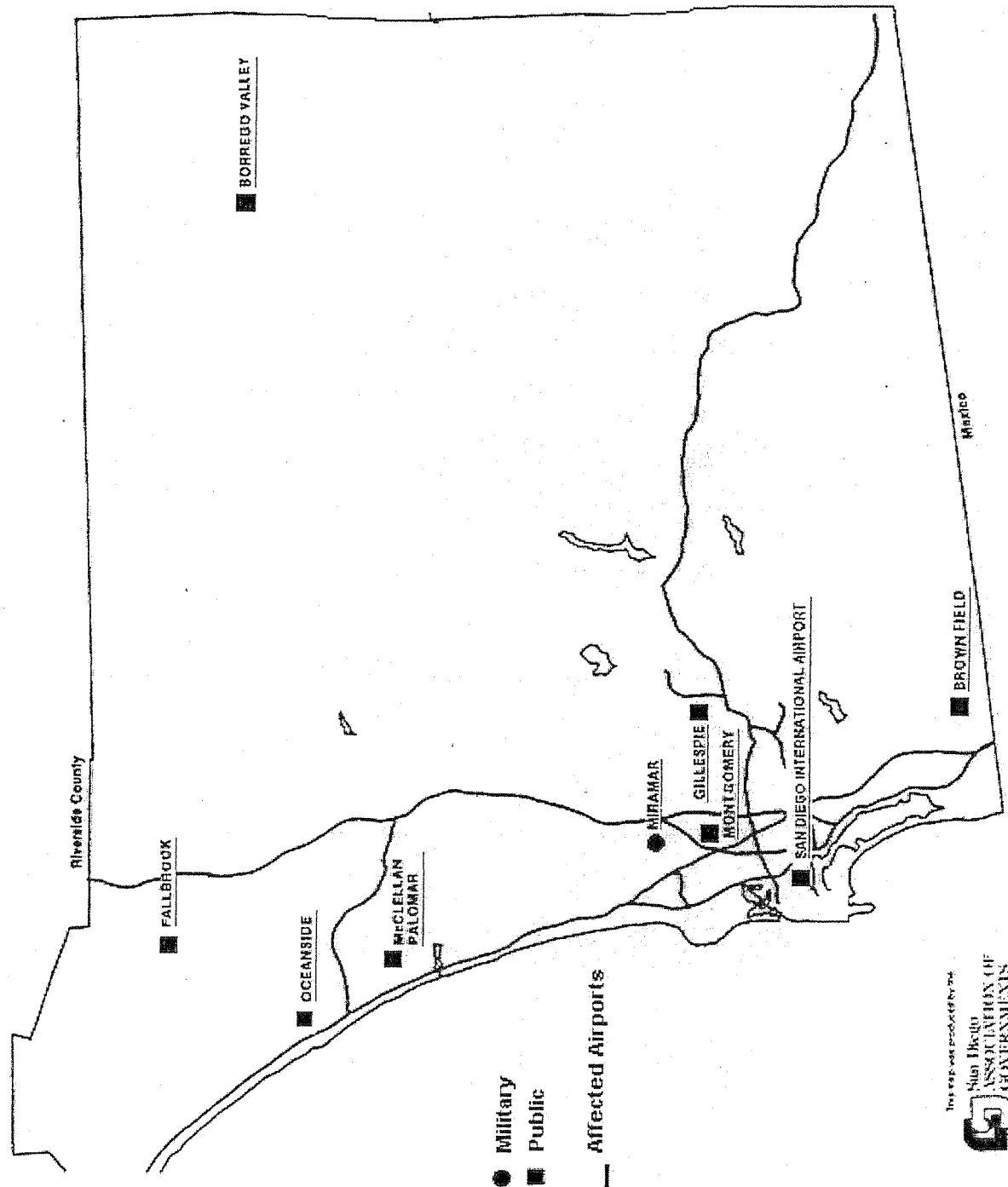
The recommendations contained in the Plan apply to both the current situation at the Airport and to the future operations as planned for in the Montgomery Field master plan.

### **Montgomery Field**

Montgomery Field is located in the Kearny Mesa section of the City of San Diego, on John J. Montgomery Drive, between State Route (SR)163 and Interstate 15 (see Figure 1). The City of San Diego owns and operates the Airport. The Airport is a general aviation airport accommodating both propeller and business jet powered aircraft. In 1978, the annual operations of the Airport were 352,000, and the projected annual operations in 2000 were estimated to be 456,750. Figure 2 shows the Terminal Control Area for the San Diego region which regulates the air traffic patterns for Lindbergh Field. The unique restraints on the airspace over the San Diego region are caused by restricted airspace to the west, mountains to the east, and the Mexican Border to the south. The Airport is classified as a "reliever airport" by the FAA. The predominant flow of traffic is north-south along the coast, while the predominant runway alignments are east-west. Montgomery Field shares its airspace with MCAS Miramar and San Diego International Airport (SDIA).

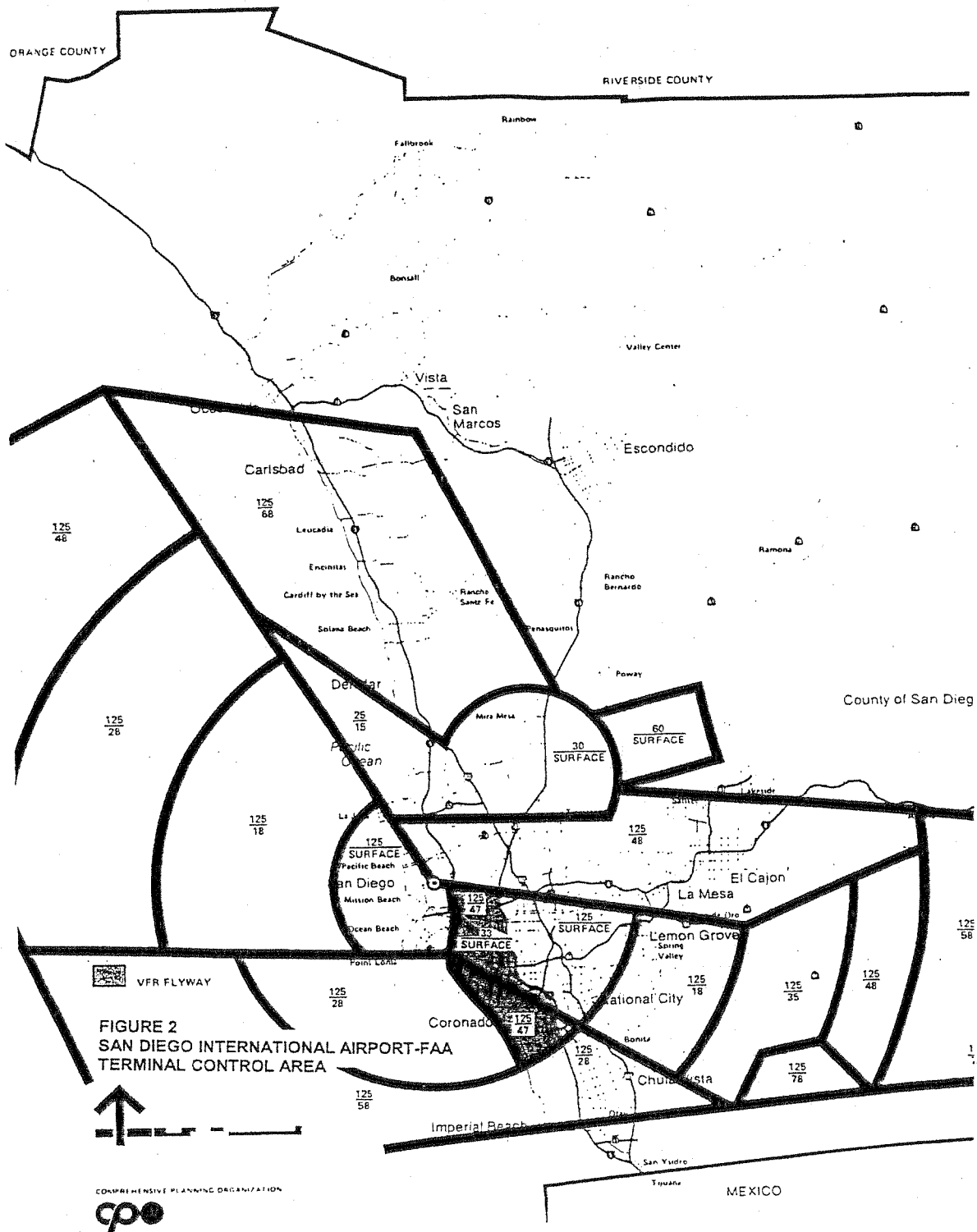
The Airport is home base to approximately 600 aircraft and provides a 4,600-foot lighted runway served by an Instrument Landing System (ILS), a 3,400-foot parallel runway, and a 3,400-foot crosswind runway. The Airport provides flight schools, repair and maintenance shops, aircraft rental, sales and storage, fuel, rental cars and a restaurant.

FIGURE 1 - SAN DIEGO REGIONAL AIRPORTS





**FIGURE 2 – SAN DIEGO INTERNATIONAL AIRPORT-FAA TERMINAL CONTROL AREA**



An ALUCP for Montgomery Field was adopted by SANDAG on July 27, 1984, and was amended on October 25, 1996. The existing ALUCP provides a discussion of the Plan's assumptions, defines the AIA for the Airport, provides projected noise contours and flight activity zones, identifies non-conforming uses, and provides plan recommendations and a discussion of the ALUC development review process.

## II. PLAN ASSUMPTIONS

The projected community noise equivalent level (CNEL) noise contours (Figure 3) were developed by the consulting firm of Bolt Beranek and Newman Inc. under contract to the City of San Diego. These noise contours are based on the following statistical data:

**TABLE 1**  
**ASSUMPTIONS AND FORECASTS FOR THE**  
**PROJECTED NOISE CONTOURS - MONTGOMERY FIELD**

	1981 <u>Existing</u>	2000 <u>Projected</u>
Annual Operations	242,243	456,750
Single Engine Piston	83.1%	75.5%
Two Engine Piston	14.8%	21.0%
Two Engine Turboprop	1.7%	2.3%
Citation	.28%	.83%
Learjet	.12%	.36%
Day (7 A.M. to 7 P.M.)	89.5%	89.5%
Evening (7 P.M. to 10 P.M.)	6.6%	6.6%
Night ((10 P.M. to 7 A.M.)	3.9%	3.9%*
Runway 10L & 10R	1%	1%
Runway 23	6%	6%
Runway 5	8%	8%
Runway 28R & 28L	85%	85%

\* Nighttime operations are forecasted to decline over time due to the implementation of a nighttime curfew from the hours of 11:30 P.M. to 6:30 A.M.

The contours identified for "Revised Flight Tracks" reflect a change only in the location of the initial left turn from Runways 28L and 28R. The location of the initial turn is 3,400 feet farther west than for the observed flight tracks. This location was chosen because shorter distances would not be effective in keeping the aircraft away from the residential area, and longer distances would not have any effect of the 65 decibels (dB) CNEL noise contour.

## III. AIRPORT INFLUENCE AREA

The Airport Influence Area is determined for those areas adjacent to airports which could be impacted by noise levels exceeding the California State Noise Standards or where height restrictions would be needed to prevent obstructions to navigable airspace as outlined in Federal Aviation Administration regulations.

The Airport Influence Area is generally the area in which current and future airport-related noise, overflight, safety and/or airspace protection factors may affect land uses or necessitate restrictions on the uses. The Airport Influence Area is determined by the location and configuration of the airport and the extent of the noise and safety impacts of the airport. The Airport Influence Area is also extended to include review of proposed construction, regardless of its proximity to an airport, when such construction requires FAA airspace hazard review under Part 77 of the Federal Aviation Regulations. The Airport Influence Area represents the boundary of the ALUC's planning and review authority for the specific airport. The Montgomery Field Influence Area is shown on Figure 3. The City of San Diego through its community planning process and zoning ordinance retains land use control of the Airport Influence Area.

#### IV. PROJECTED NOISE CONTOURS

The foundation for any ALUCP is the determination of land areas currently impacted by the noise generated by aircraft operations, plus the land areas projected to be impacted in future years by forecasted aircraft activity. In California, the technique used for quantifying aircraft noise is the community noise equivalent level (CNEL). The CNEL is a descriptor of daily noise environment.

CNEL is a 24-hour, time-weighted energy average noise level based on the A-weighted decibel. It is a measure of the overall noise experienced during an entire day. The term "time-weighted" refers to the penalties attached to noise events occurring during certain sensitive time period. In the CNEL scale, noise occurring between the hours of 7 p.m. and 10 p.m. is penalized by approximately five (5) dB. This penalty accounts for the greater potential for noise to cause communication interference during these hours, as well as typically lower ambient noise levels during these hours. Noise that takes place during the night, from 10 p.m. to 7 a.m., is penalized by ten (10) dB. This penalty was selected to account for the higher sensitivity to noise in the nighttime and the expected further decrease in background noise levels that typically occurs in the nighttime. As a practical matter, this means that aircraft events occurring during the evening hours are treated as approximately three (3) noise events for purposes of calculating CNEL values. Each aircraft noise event occurring during the nighttime hours is treated as if ten (10) aircraft noise events had occurred.

The CNEL descriptor is used by the State of California to describe land use compatibility with respect to aircraft noise exposures. CNEL is also the noise descriptor standard defined in Title 21 of the CALIFORNIA CODE OF REGULATIONS, AIRPORT NOISE STANDARDS, and the standard specified for evaluation of exterior and interior noise impacts in Title 24 of the CALIFORNIA BUILDING STANDARDS COMMISSION, CALIFORNIA STANDARD BUILDING CODE. The CNEL is also identified as one of two noise descriptors used in the preparation of a noise element of a general plan.

The outside boundaries of the areas generally subject to such noise are usually portrayed by lines overlaid on a map of the area around the airport. These boundary lines are referred to as "noise contours." The noise contours provide one of the bases for delineating the airport's "Area of

# Exhibit 46

ISTOPHER S. MORRIS  
GARET G. JACOBO  
ISTANT CITY ATTORNEYS

BERLY A. URIE  
PUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

Michael J. Aguirre  
CITY ATTORNEY

CRIMINAL DIVISION  
1200 THIRD AVENUE, SUITE 700  
SAN DIEGO, CALIFORNIA 92101-4103  
TELEPHONE (619) 533-5500  
FAX (619) 533-5505

January 31, 2007

**By Hand Delivery**

Aaron Feldman  
Richard Vann, Registered Agent  
SUNROAD CENTRUM, L.P., a California Limited Partnership  
SUNROAD ASSET MANAGEMENT, INC.  
SUNROAD ENTERPRISES  
4440 Eastgate Mall, Suite 400  
San Diego, CA 92121

***SECOND NOTICE OF NUISANCE (Penal Code section 373a)***

Construction of a twelve-story commercial office building ("Sunroad Centrum I Building") located 0.7 nautical miles from the City of San Diego's Montgomery Field Airport ("Montgomery Field") has been determined by the Federal Aviation Administration ("FAA") to be a hazard to air navigation at Montgomery Field. As a hazard to air navigation, the Sunroad Centrum I Building poses a serious threat to the health and safety of the citizens of the City and all who utilize Montgomery Field.

On or about April 24, 2006, the FAA notified Sunroad that the Sunroad Centrum I Building at 180 feet AGL, exceeded FAA airport obstruction standards. The FAA concluded the building would have an adverse physical or electromagnetic interference effect upon navigable airspace or on the navigation facilities located at Montgomery Field. The FAA notified Sunroad that any height exceeding 160 feet AGL constituted a hazard. The FAA issued a "Notice of Presumed Hazard" to Sunroad. The FAA advised that pending resolution of the building height issue, no construction of the Sunroad Centrum I Building should proceed.

Sunroad has ignored the FAA's directive and proceeded to frame the Sunroad Centrum Building to its maximum planned height of 180 feet AGL, and erected construction cranes that exceed 180 feet AGL.

On or about August, 11, 2006, the FAA assessed the building at 180 feet AGL—the true height of the building as framed by Sunroad. The FAA found the Sunroad Centrum I Building at its actual height of 180 feet AGL, posed a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft, and the operation of air navigations at the City's

Aaron Feldman  
Richard Vann

-2-

January 31, 2007

Montgomery Field. The FAA issued an FAA Hazard Determination ("Hazard Determination"). Sunroad did not appeal the FAA's Hazard Determination. The FAA's Hazard Determination became final on September 20, 2006.

On or about September 14, 2006, the Department of Transportation contacted Sunroad to advise it had been made aware of the FAA's Hazard Determination and violation of the Code of Federal Regulations. As such, the DOT advised Sunroad the construction of the Sunroad Centrum I Building was in violation of California Public Utilities Code section 21659 ("PUC §21659"). On or about September 29, 2006, the DOT again notified Sunroad that the construction of the Sunroad Centrum I Building was in violation of PUC §21659(a). The DOT warned Sunroad that without issuance of a permit by the DOT, continued construction of any part of the building exceeding 160 feet AGL was unlawful.

On or about October 19, 2006, the San Diego City Attorney's Office advised the City's Development Services Department to issue a Stop Work Order to halt construction of the Sunroad Centrum I Building. On October 27, 2006, the City issued a Stop Work Order for the Sunroad Centrum I Building, ordering all work on the top 17 feet of the building cease. On or about December 13, 2006, the City revised the Stop Work Order for the Sunroad Centrum I Building, ordering all work on the top 20 feet of the building cease.

The conditions described above violate the San Diego Municipal Code. You are notified to remove, discontinue, or abate the illegal conditions at this property/location. *In this instance, satisfactory compliance means lowering the current height of the building under construction by 26 feet (as defined by FAA measurements), so that it does not exceed 160 feet AGL, within 30 days.* Failure to take corrective action will constitute a misdemeanor, and each day the nuisance exists after service of this notice is a separate and distinct offense pursuant to California Penal Code section 373a.

MICHAEL J. AGUIRRE, City Attorney

By



Kimberly A. Urie  
Deputy City Attorney  
Public Integrity Unit

KAU:vf

ROPHER S. MORRIS  
ARET G. JACOBO  
ANT CITY ATTORNEY

IRLY A. URIE  
Y CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

Michael J. Aguirre  
CITY ATTORNEY

CRIMINAL DIVISION  
1200 THIRD AVENUE, SUITE 700  
SAN DIEGO, CALIFORNIA 92101-4103  
TELEPHONE (619) 533-5500  
FAX (619) 533-5505

**FAX TRANSMITTAL**

**ADDRESSEE(S)**

**FIRM/COMPANY**

**FAX NO.**

**TELEPHONE  
NO.**

on Feldman  
hard Vann, Registered Agent  
SUNROAD CENTRUM, L. P.  
SUNROAD ASSET MGMT. INC  
SUNROAD ENTERPRISES

SUNROAD CENTRUM, L. P.  
SUNROAD ASSET MGMT.  
INC  
SUNROAD ENTERPRISES

1-858-362-8448

**DATE:** January 30, 2007

**FROM:** Kimberly A. Urie

**SUBJECT:** Notice of Nuisance P. C. § 373a

**NUMBER OF PAGES (including cover page):** 3

**IF ALL PAGES ARE NOT RECEIVED, CALL:** Kimberly A. Urie, (619) 533-6177

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If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service.

**COMMENTS/INSTRUCTIONS:**

HER S. MORRIS  
ET G. JACOBO  
CITY ATTORNEYS

Y.A. URIE  
CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

Michael J. Aguirre  
CITY ATTORNEY

CRIMINAL DIVISION  
1200 THIRD AVENUE, SUITE 700  
SAN DIEGO, CALIFORNIA 92101-4103  
TELEPHONE (619) 533-5500  
FAX (619) 533-5505

January 30, 2007

**Via Facsimile 858/362-8448**

Aaron Feldman  
Richard Vann, Registered Agent  
SUNROAD CENTRUM, L.P., a California Limited Partnership  
SUNROAD ASSET MANAGEMENT, INC.  
SUNROAD ENTERPRISES  
4440 Eastgate Mall, Suite 400  
San Diego, CA 92121

***NOTICE THAT PROPERTY IS A NUISANCE (Penal Code section 373a)***

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January 30, 2007

-2-

Aaron Feldman  
Richard Vann

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MICHAEL J. AGUIRRE, City Attorney

By



Kimberly A. Urie  
Deputy City Attorney

KAU:vf

# Exhibit 47

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

**MICHAEL J. AGUIRRE**  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1100  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 533-5800  
FAX (619) 533-5856

March 20, 2007

Mr. Tom Story  
Sunroad Enterprises  
4445 Eastgate Mall, Suite 400  
San Diego, California 92121

RE: Sunroad Centrum I Building  
8620 Spectrum Center Blvd.

Dear Mr. Story:

As you are aware, the City of San Diego ("City") issued a Stop Work Notice on October 27, 2006, and again on December 13, 2006, prohibiting Sunroad from carrying out any construction activities on the top twenty (20) feet of the Sunroad Centrum I Building. You are also aware that the People of the State of California and the City have filed a public nuisance abatement action against Sunroad on the basis that the top 20 feet of the Centrum I Building has been deemed a Hazard to Air Navigation at the City's Montgomery Field Airport. As such, Sunroad has violated both federal and California state law. On December 21, 2006, the City's Development Services Director consented to allow Sunroad to place a "weather proof covering" on the Centrum I structure with the proviso that

**"The 'Stop Work Order' issued December 13, 2006, halting work on the top twenty feet (20 Ft) of the structure shall remain in place."**

As City Attorney, I have been made aware today, March 20, 2007, that walls, windows and other structures are being completed within the top 20 feet covered by the Stop Work Order. For this reason this letter is meant to place you on notice that the City Attorney's Office intends to enforce the Stop Work Order without exception. Upon confirmation that the Stop Work Order has been violated, a restraining order and injunction will be sought from the Court commanding Sunroad to cease all construction activities covered by the Stop Work Order.

If it is not already clear, no work of any kind is to be conducted on the top 20 feet of the Centrum I structure. Any previous communication allowing Sunroad to "weatherize" the

Tom Story

-2-

March 20, 2007

structure or, by implication, allow any work whatsoever to be conducted within the top 20 feet of the structure, is hereby permanently revoked

+

CITY OF SAN DIEGO

  
Michael Aguirre  
CITY ATTORNEY

CARMEN A. BROCK  
DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

Michael J. Aguirre  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 533-5800  
FAX (619) 533-5856

## FAX TRANSMITTAL

ADDRESSEE(S)	FIRM/COMPANY	FAX NO.	TELEPHONE NO.
Tom Story		(858) 362-8448	

DATE: March 20, 2007

FROM: Carmen A. Brock, Deputy City Attorney

SUBJECT: People, et al. v. Sunroad Centrum, L.P., et al.  
San Diego Superior Court Case No. GIC 877054

NUMBER OF PAGES (including cover page): 3

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---

### COMMENTS/INSTRUCTIONS:

Please find attached correspondence dated March 20, 2007 regarding the above-referenced matter.

# Exhibit 48

## REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO:

CITY ATTORNEY

2. FROM: (ORIGINATING DEPARTMENT)

Development Services

3. DATE

October 30, 1997

SUBJECT: New Century Center Development Plan

5. FOR INFORMATION, CONTACT: (NAME &amp; MAIL STA.)

M. Westlake/M.Escobar-Eck

6. TELEPHONE NO.

X67769/x66499

7. CHECK HERE IF BOX 1472A, "DOCKET  
SUPPORTING INFORMATION," HAS  
BEEN COMPLETED ON PAGE 2: ☐

## COMPLETE FOR ACCOUNTING PURPOSES

FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT	JOB ORDER	C.I.P. NO.	AMOUNT
	1300					

9. ADDITIONAL INFORMATION / ESTIMATED COST:  
None with this action.  
(The cost of processing this project is paid for by the developer account.)

RECEIVED  
NOV -5 AM 9:50  
SAN DIEGO, CALIF.

## ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	Tina Christianson	10/30/97	6	CITY MANAGER		10.31.97
2	Kurt Chilcott		10/30/97		AUDITOR		
3	Facilities Financing	Charles & Gabriel	10/30/97	last	CITY ATTORNEY	P. Dugand	11-3-97
4	EAS	Devin Adams	10/30/97		ORIGINATING DEPARTMENT	Mike Westlake	10/31/97
5	EOCP		10/31/97		MGR. DOCKET COORD.		COUNCIL REP.
6	MSCP	Thomson & Stoy	10/31/97		RULES COMMITTEE	<input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
						<input type="checkbox"/> Refer to _____ Date _____	

11. PREPARATION OF:

☒ RESOLUTION(S)☒ ORDINANCE(S)☒ AGREEMENT(S)☐ DEED(S)

1. Resolution certifying that EIR no. 96-0165 has been completed in compliance with CEQA and its guidelines and that said EIR reflects the independent judgement of the City of San Diego as Lead Agency. Stating for the record that the final EIR has been reviewed and considered prior to approving the project. Adopting the Findings and Statement of Overriding Considerations. Adopting the Mitigation Monitoring and Reporting Program.

2. Resolution approving the Vesting Tentative Map no. 96-0165.

3. Resolution adopting the amendment to the Progress Guide and General Plan, the Kearny Mesa Community Plan and the adoption of the New Century Center Master Plan.

4. Resolution approving the Planned Commercial Development & Resource Protection Ordinance & Planned Industrial Development Permit.

5. Resolution authorizing the City Manager to execute a Conservation Agreement and Declaration of Restrictions. ~~and (d.d.d.)~~

6. Ordinance Rezoning the property: 83.8 acres from M1-B to CA; 7.9 acres from M1-B to M1-A; 8.4 acres from M1-B to OS-TDR as identified on drawing No. B-4506.

7. Ordinance adopting the Development Agreement between the City of San Diego and General Dynamics Properties, Inc.

11a. MANAGER'S RECOMMENDATIONS:

Introduce the Ordinance and Adopt the Resolutions

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S):

(Six) Stallings

COMMUNITY AREA(S):

Kearny Mesa

CLERK INSTRUCTIONS:

Noticed Public Hearing targeted for November 18, 1997. Please notice for 10:00 a.m.

ENVIRONMENTAL IMPACT:

Environmental Impact Report 96-0165 has been prepared for this project.

NOV 18 1997

M-1472 (Rev. 11-94)

R-289450 then R-289453

0-18447

R-18447

DEC 02 1997

WP60WIN Version (Rev. 11-23-94)

Exhibit 49

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**DATE ISSUED:** April 20, 2007 **REPORT NO.** PC-07-058  
**ATTENTION:** Planning Commission, Agenda of April 26, 2007  
**SUBJECT:** SUNROAD CENTRUM RESIDENTIAL - PROJECT NO. 99397  
PROCESS 4  
**OWNER/  
APPLICANT:** Sunroad Centrum Partners, Limited Partnership (Attachment 10)

**SUMMARY**

**Issue(s):** Should the Planning Commission approve a Planned Development Permit and Vesting Tentative Map for two 5-story residential buildings containing 221 residential units and two 4-story residential buildings containing 379 residential units; with subterranean parking, three recreation centers, and a 2-acre park site located at 8773 Lightwave Avenue within the Kearny Mesa Community Planning area?

**Staff Recommendation:**

1. APPROVE Planned Development Permit No. 325462; and
2. APPROVE Vesting Tentative Map No. 329293.

**Community Planning Group Recommendation:** On August 16, 2006, the Kearny Mesa Planning Group voted 9-0 to recommend approval of this project with additional recommendations. Please see the Discussion section of this report. (Attachment 9).

**Environmental Review:** This project was addressed in the three previous environmental documents for the graded project site, including EIR No. 96-0165, the Addendum to EIR No. 96-0165, and the Sunroad Centrum Mitigated Negative Declaration LDR No. 41-0101.

**Fiscal Impact Statement:** All costs associated with processing of this application are paid for by the applicant.

**Code Enforcement Impact:** None.

**Housing Impact Statement:** The project site is designated for Mixed Use Commercial and Residential and allows medium to high density residential yields. The proposed project will provide 600 dwelling units where none presently exist, and a density yield of approximately 49.2 dwelling units per acre which is considered a high density yield. The applicant proposes to set aside 58 units as Affordable Housing. This would help the City address its shortage of affordable housing stock during a time when the City Council has determined that the City of San Diego is in a housing state of emergency. This project is regulated by a preexisting Development Agreement (The New Century Center Master Plan) and is exempt from the Inclusionary Housing Ordinance.

## **BACKGROUND**

The proposed project is located on 12.49 acres of the previous San Diego General Dynamics site within the CC-1-3 zone of the Kearny Mesa Community Planning Area (Attachments 1-3). There is a Development Agreement for the site and the New Century Center Master Plan identify it as the CA zone, therefore any proposed development shall comply with the CA zone. The site is designated for Mixed Use Commercial and Residential development. The original New Century Center project was approved by the City Council on November 18, 1997, allowing General Dynamics (the original owner) to develop a high-density mixed-use retail, commercial and industrial business park on 242-acres centrally located within the Kearny Mesa Community Plan area. The project included adoption of the New Century Center Master Plan (Master Plan) as part of the Kearny Mesa Community Plan, approval of a Development Agreement between the City and General Dynamics, and adoption of Planned Industrial Development/Planned Commercial Development Permit (PID/PCD) No. 96-0165.

On October 2, 2000, PID/PCD Permit No. 99-1269 amended the original approval, Permit No. 96-0165, to include Residential use in the western portion of the property (Attachment 12). Amendments to the New Century Center Master Plan were also approved in October of 2000, to allow 550 dwelling units in the commercial mixed use area of the Master Plan, part of which included the subject site. The Development Agreement was also amended on October 2, 2000, to address the addition of residential use.

On November 12, 2002, an amendment to the Master Plan was approved to allow 570 additional residential units on the 33 acre commercial/mixed use area (Planning Areas "1A" "1B" and "2B") and an eight acre industrial area (Planning Area "3A")(Attachment 13). This approval brought the total permitted residential units in the Master Plan area to 1,568. Development of the additional 570 units will require the provision of a minimum two-acre park on-site and a shuttle service to serve the uses. Per the City Council's action, implementation of the park and shuttle service requirement will be triggered by the issuance of the 999<sup>th</sup> building permit.

On April 17, 2003, the Planning Commission approved a Planned Development Permit and Tentative Map Waiver (PTS No. 5711), under a separate ownership, to construct 90 condominiums at the Sunroad A site. Also, on April 17, 2003, the Planning Commission approved a Planned Development Permit and Tentative Map Waiver (PTS No. 5715) to construct

168 condominiums at the Sunroad B property (also known as Promenade).

On May 15, 2003, the Planning Commission approved a Planned Development Permit and Tentative Map Waiver (PTS No. 5611) for the Spectrum Townhomes project to allow development of thirteen buildings with a total of 148 townhome condominium units.

On June 19, 2003, the Planning Commission approved a Planned Development Permit and Tentative Map Waiver (PTS No. 2552) to construct 120 condominium units.

The project proposes the development of 600 dwelling units in two (2), five-story residential buildings and two (2), four-story multi-family residential buildings with underground parking and the creation of a 2 acre public park. The project is located on portions of Planning Areas 1A, 2B, and 3A and is regulated by the New Century Center Master Plan, Development Standards and Design Manual of Planned Commercial Development (PCD)/Planned Industrial Development (PID)/Planned Residential Development (PRD) Permit LDR No. 99-1269.

The proposed project requires a Planned Development Permit to amend PCD/PID/PRD No. 99-1269 (Land Development Code Section 126.0602). A Vesting Tentative Map is required, by the Land Development Code Section 125.0410, for the proposed division of the 12.49 acre site into four lots for a residential apartment and condominium development.

## **DISCUSSION**

### **Project Description:**

The 12.49 acre site is located on four vacant parcels at 8773 Lightwave Avenue (Attachment 1). The surrounding area is developed with a mix of commercial and residential uses, with some Light Industrial uses to the North and Southwest (Attachment 4). The project proposes two 5-story (maximum height approximately 63' 6") residential buildings, Building A North (Lot 2) with 111 units & Building A South (Lot 4) with 110 units; and two 4-story (maximum height approximately 47') residential buildings, Buildings B & C (Lot 1) with 184 and 195 units respectively; two floors of subterranean parking; three recreation centers; and a 2-acre public park. Building A North proposes 60 one-bedroom units, 35 two-bedroom units, and 16 two-story, two-bedroom townhomes. Building A South proposes 60 one-bedroom units, 34 two-bedroom units, and 16 two-story, two-bedroom townhomes. Building B proposes 8 studio units, 96 one-bedroom units, and 80 two-bedroom units. Building C proposes 15 studio units, 101 one-bedroom units, and 79 two-bedroom units (Attachment 5).

### **Environmental Analysis:**

This project was addressed in the three previous environmental documents for the graded site including the Addendum to EIR No. 96-0165, EIR No. 96-0165, and the Sunroad Centrum Mitigated Negative Declaration LDR No. 41-0101. The project site does not contain any vernal pools, sensitive resources, or unique archeological resources, and complies with FAA regulations. The project is consistent with what was envisioned in the previous environmental

documents and does not exceed the approved number of residential units or the average daily trips (ADT's). No new mitigation would be required.

The project would be subject to the Mitigation, Monitoring and Reporting Program (MMRP) conditions required by the previously cited environmental documents including the requirement for paleontological monitoring, a waste management plan, and transportation improvements.

### **Community Plan Analysis:**

The proposed project is located within the New Century Center (NCC) in the Kearny Mesa Community Planning area, is designated in the plan for Mixed Use Commercial and Residential, and is subject to the development criteria of the NCC Master Plan, Design Manual and Development Standards (Attachment 13). The project proposes to construct 600 residential units with on-site recreational facilities, a 2.0-acre park, and other park-like public amenities.

The NCC occupies the former General Dynamics campus, and the community plan includes a number of objectives. Specifically, the plan recommends that the site be developed with a mixture of uses including residential on the western portion; establish site planning standards and architectural design guidelines that will further a sense of community identity; create a featured locale within a landscaped setting that will establish an important central focus for the site, which is open to the public and provides pedestrian non-vehicular linkages; and provide park facilities if more than 998 dwelling units are constructed for the entire master plan area.

The project will provide a residential use conforming to site planning and architectural design guidelines, while creating a landscaped featured locale, and providing a 2.0-acre public park.

The residential element of the community plan includes the policy of encouraging residential development on urban infill sites within mixed-use projects. The NCC is a mixed-use project and the proposed project will provide 600 dwelling units in a residential development.

The Master Plan (Volume 1) of the NCC describes the proposed uses in each of the planning areas, and allows medium to high density residential uses in Planning Areas (PA) 1A, 2B, and 3A. The project proposes to provide residential development in a portion of PA 1A, 2B, and 3A, with a density yield of approximately 49.2 dwelling units per acre, which is consistent with the recommended density range of NCC Master Plan.

The proposed project meets the objectives and policies of the community plan and the NCC Master Plan, Design Manual, and Development Standards.

### **Community Planning Group Recommendation**

On August 16, 2006, the Kearny Mesa Planning Group voted 9-0 to recommend approval of this project with the additional recommendation that the park include some passive landscaped areas with trees, shaded sitting areas and other landscaped elements including a tot area. Also, it was requested that the street parking adjacent to the park be posted to limit parking to either a two or four hour limit so it will not become an alternative for residents to their assigned residential

parking (Attachment 9). Park planning staff will be working with the Park and Recreation Board and community to determine the amenities for the proposed park site. The Planned Development Permit does not regulate on-street parking, however the applicant has agreed to work with Traffic Engineering, Streets, to study a parking time limit zone.

On August 4, 2006, the San Diego Spectrum Design Review Committee (DRC) approved this project as depicted in preliminary drawings and elevations.

### **Project-Related Issues:**

#### **Height:**

The project proposes two 5-story (maximum height approximately 63' 6") residential buildings, and two 4-story (maximum height approximately 47') residential buildings, two floors of subterranean parking; three recreation centers; and a 2-acre public park. The project site has a Development Agreement and Master Plan which specifies that the zone for this site is the CA zone, in accordance with the Municipal Code in effect prior to January 3, 2000. There is no height limit in the CA zone. However, the City required review by the San Diego Regional Airport Authority and the Federal Aeronautical Administration.

On March 5, 2007, the Federal Aviation Administration (FAA) issued a Determination of No Hazard to Air Navigation for this project.

On April 5, 2007, the San Diego Regional Airport Authority found this project to be consistent with the Certified Land Use Plan for Marine Corp Air Station Miramar because it identifies residential and recreational uses as being compatible outside the 60db CNEL noise contour. This project is not located in the Montgomery Field Airport Influence Area.

#### **Affordable Housing:**

The Development Standards (Volume 2, Page IV-7) of the NCC states "after the 550<sup>th</sup> dwelling unit within the mixed use Commercial/Residential area (Planning Area 1A, 1B, 2B and 3A), residential projects shall include approximately 10% of the proposed units as affordable housing. Further, the NCC defines affordable housing as units for households earning no more than sixty-five percent (65%) of the median income, or an equally acceptable affordable housing program." Prior development rights have been approved for 526 residential units in these planning areas, leaving 24 units of the proposed project not subject to the affordable housing requirement. Therefore 576 of the proposed residential units with this application would be subject to the affordable housing provision as stated in the NCC Master Plan. Accordingly, fifty-eight (58) units of affordable housing will be provided on-site and the project will meet the affordable housing recommendations of the NCC Development Standards. (This project is regulated by a preexisting Development Agreement (The New Century Center Master Plan) and is exempt from the Inclusionary Housing Ordinance).

**Park Issues:**

The developer is providing a minimum contiguous 2.0 useable acre public park developed to support active recreational programming and 1.42 acres of linear park around the perimeter of the Sunroad Centrum development, for a total of 3.42 useable acres, to satisfy population-based park requirements for the project. They are also required to provide a pro rata share of the cost of a community recreation building and a community swimming pool, to be paid as park fees at the time of issuance of building permits. These fees are to be based on current fair market value of the land and current design and construction costs, determined by the Park Planning and Development Division, at time of permit issuance in lieu of the park portion of the Kearny Mesa Development Impact Fee.

**Pedestrian Linkages and Connectivity:**

The Design Manual (Volume 3, Section V, A6) of the NCC states that ground floor residential units facing public streets should have direct access to the street. Further, stoop units, patio entries, or other designs should be used to connect ground floor entry doors to public sidewalks. Staff has included this as Condition 39 in Planned Development Permit No. 325462 for those units that face Spectrum Center Boulevard (Attachment 6).

In addition, the Design Manual requires connectivity between uses and other residential developments. The proposed project would continue the meandering jogging trail around the park area and the residential units proposed to the north and south. In addition there are existing eight-foot, non-contiguous sidewalks that serve as pedestrian linkages with other residential and commercial developments both existing and planned.

**Transit Services:**

The NCC Master Plan (Volume 2, page III-8), recommends a bus/shuttle loop route within the master project, interconnected with on-site uses to accommodate employees and customers accessing the site via bus transit. Currently there is limited bus service through the master project. In addition, Condition No 38 of the draft permit requires that "prior to building permit issuance for the 999th residential unit within the New Century Center Master Plan area, the Owner/Permittee shall assure the provision of an internal shuttle transit system, satisfactory to the City Engineer, including, but not limited to, the shuttle system implementation schedule and duration and operational characteristics (e.g. route, frequency, daily hours of operation)." This condition is to satisfy the Mitigation Monitoring and Reporting Program for the Master Plan Amendment that was approved November 12, 2002.

**CONCLUSION**

The NCC Master Plan objectives were to produce a Project that encompasses all levels of land uses to create a community that can have compatible residential, commercial and employment opportunities. The proposed residential project contributes to this goal with its proximity to planned office and recreational improvements as well as retail and industrial uses to the north and east. Staff has determined that the required findings can be made as the project meets the applicable San Diego Municipal Code regulations and requirements. Staff recommends approval of the project as proposed.

## **ALTERNATIVES**

1. Approve Planned Development Permit No. 325462 and Vesting Tentative Map No. 329293, with modifications.
2. Deny Planned Development Permit No. 325462 and Vesting Tentative Map No. 329293, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



**Mike Westlake**  
**Program Manager**  
**Development Services Department**



**Jeannette Temple**  
**Development Project Manager**  
**Development Services Department**

### Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Plans/Vesting Tentative Map
6. Draft PDP Permit
7. Draft PDP Resolution
8. Draft Vesting Tentative Map Conditions and Subdivision Resolution
9. Community Planning Group Recommendation
10. Ownership Disclosure Statement
11. Project Chronology
12. Planned Industrial Development/Planned Commercial Development (PID/PCD) Permit No. 99-1269
13. New Century Center Master Plan

# Exhibit 50



# San Diego Regional Energy Infrastructure Study

December 30, 2002

*Prepared for:*

The County of San Diego  
The San Diego Regional Energy Office  
The City of San Diego  
The Utility Consumers Action Network  
The San Diego County Water Authority  
The San Diego Association of Governments  
And  
The Port of San Diego



San Diego  
**REGIONAL  
ENERGY  
OFFICE**



**Port of San Diego**

*Discover what's in it for you.*

*Prepared by:*

Science Applications International Corporation



**SLACK CAPACITY** – The amount of pipeline capacity in excess of demand that is needed generate the benefits of competition. There is no slack capacity when all existing available capacity is used to meet demand. When there is no slack capacity consumers loose the benefits of competition and gas prices will dramatically increase. Need sufficient reserves for a competitive market to function.

**SOLAR COLLECTOR** – A component of an active or passive solar system that absorbs solar radiation to heat a transfer medium which, in turn, supplies heat energy to the space or water heating system.

**SOLAR CELL** – A photovoltaic cell that can convert light directly into electricity. A typical solar cell uses semiconductors made from silicon.

**SOLAR COLLECTOR** – A surface or device that absorbs solar heat and transfers it to a fluid. The heated fluid then is used to move the heat energy to where it will be useful, such as in water or space heating equipment.

**SOLAR ENERGY** – Heat and light radiated from the sun.

**SOLAR HEAT GAIN** – Heat added to a space due to transmitted and absorbed solar energy.

**SOLAR HEATING AND HOT WATER SYSTEMS** – Solar heating or hot water systems provide two basic functions: (a) capturing the sun's radiant energy, converting it into heat energy, and storing this heat in insulated storage tank(s); and (b) delivering the stored energy as needed to either the domestic hot water or heating system. These components are called the collection and delivery subsystems.

**SOLAR IRRADIATION** – The amount of radiation, both direct and diffuse, that can be received at any given location.

**SOLAR POWER** – Electricity generated from solar radiation.

**SOLAR RADIATION** – Electromagnetic radiation emitted by the sun.

**SOLAR THERMAL POWER PLANT** – means a thermal power plant in which 75 percent or more of the total energy output is from solar energy and the use of backup fuels, such as oil, natural gas, and coal, does not, in the aggregate, exceed 25 percent of the total energy input of the facility during any calendar year period.

**SOLAR THERMAL** – The process of concentrating sunlight on a relatively small area to create the high temperatures needs to vaporize water or other fluids to drive a turbine for generation of electric power.

**SO<sub>x</sub>** – Oxides of sulfur that are component of air pollution that can be produced by the burning of fossil fuels. Also called sulfur dioxide. SO<sub>x</sub> is known to cause smog and acid rain and is more predominant in burning of fuels in vehicles and power plants that burn coal and oil.

**STEAM ELECTRIC PLANT** – A power station in which steam is used to turn the turbines that generate electricity. The heat used to make the steam may come from burning fossil fuel, using a controlled nuclear reaction, concentrating the sun's energy, tapping the earth's natural heat or capturing industrial waste heat.

**STORAGE TYPE WATER HEATER** – A water heater that heats and stores water at a thermostatically controlled temperature for delivery on demand. [See California Code of Regulations, Title 20, Section 1602(f)(6)]

**STRANDED COSTS/STRANDED ASSETS** – See embedded Costs Exceeding Market Prices.

**SUBSTATION** – A facility that steps up or steps down the voltage in utility power lines. Voltage is stepped up where power is sent through long-distance transmission lines. It is stepped down where the power is to enter local distribution lines.

# Exhibit 51



## Mitigated Negative Declaration

Land Development  
Review Division  
(619) 446-5460

LDR No. 41-0101

Subject: Sunroad Centrum. AMENDMENTS TO THE CITY OF SAN DIEGO PROGRESS GUIDE AND GENERAL PLAN; KEARNY MESA COMMUNITY PLAN; AND NEW CENTURY CENTER MASTER PLAN, DEVELOPMENT STANDARDS, AND DESIGN MANUAL; REZONE; AMENDMENT TO PCD/PRD/PID PERMIT NO. 99-1269; AND SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND GENERAL DYNAMICS PROPERTIES, INC. (DOCUMENT NO. 00-18448) in order to increase the maximum amount of residential development permitted within a portion of the Master Plan Area. The proposal includes the relocation of a San Diego Gas & Electric Company electrical substation to a planned non-residential portion of the project area. The proposal would increase the maximum amount of residential development permitted within Planning Areas (PAs) 1A, 1B, 2B and 3A of the New Century Master Plan Area from 550 to 1,120 for sale or rent multi-family dwelling units, thereby increasing the total maximum number of residential dwelling units permissible within the Master Plan Area from 998 to 1,568. In addition to residential uses, office, hotel, restaurant and retail uses are currently permissible within these Planning Areas and would continue to be permissible uses. The proposal includes the rezone of the 8.2-acre PA 3A from M-1B to CA to allow residential use as an option within this Planning Area. The project applicant is the owner of the properties within PAs 1A, 2B and 3A, which comprise approximately 41 acres of the 244-acre Master Plan Area. The project area is located within the northwestern portion of the New Century Center Master Plan Area of the Kearny Mesa Community Planning Area. Applicant: Sunroad Enterprises.

- I. PROJECT DESCRIPTION: See attached Initial Study.
- II. ENVIRONMENTAL SETTING: See attached Initial Study.
- III. DETERMINATION:

The City of San Diego conducted an Initial Study which determined that the Sunroad Centrum proposal could have a significant adverse effect upon transportation/circulation and public services (park and recreation). Subsequent revisions in the project proposal create the specific mitigation identified in Section V of this Mitigated Negative Declaration. The project as revised now avoids or mitigates the potentially adverse effect previously identified, and the preparation of an Environmental Impact Report will not be required.

The City of San Diego conducted an Initial Study which determined that the San Diego Gas & Electric Company's proposed electrical substation relocation could result in significant adverse noise and human health/public safety impacts. Based upon further review and analysis of the proposal, it was found that the proposed electrical substation relocation will

not result in any significant, unavoidable environmental impacts; therefore, the preparation of an Environmental Impact Report will not be required.

#### IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above Determination.

#### V. MITIGATION, MONITORING AND REPORTING PROGRAM:

##### Transportation/Circulation

1. Prior to building permit issuance for the 999th residential unit within the New Century Center Master Plan Area, the owner/permittee shall assure the provision of an internal shuttle transit system within the Master Plan Area to the satisfaction of the City Engineer, including, but not limited to, the shuttle system implementation schedule and duration and operational characteristics (e.g., route, frequency, daily hours of operation).

##### Public Services (Park and Recreation)

2. Prior to building permit issuance for the 999<sup>th</sup> residential unit within the New Century Center Master Plan Area, the owner/permittee shall meet, or assure through agreement or bond, one of the following options to the satisfaction of the City Manager (or alternative requirement imposed by the City Council as a condition of approval):

- a. The developer shall provide 3.42 contiguous, usable (maximum 2% grade for active recreation) acres of land within their development for park and recreation purposes, and provide funding for the design and construction of the required public recreational facilities on the provided acreage plus their pro rata share of the cost of constructing a 15,000-square-foot recreation building and swimming pool; OR
- b. ~~The developer shall acquire 3.42 contiguous, usable (maximum 2% grade for active recreation) acres of land within a one-half mile radius of their development, acceptable to the City Manager, and provide funding for the design and construction of the required public recreational facilities on the provided acreage plus their pro rata share of the cost of constructing a 15,000-square-foot recreation building and swimming pool; OR~~ *delete*

- b* *c.* The developer shall provide a minimum of 2.0 contiguous, usable (maximum 2% grade for active recreation) acres of land within their development, provide the funding for the design and construction of the required public recreational facilities on the provided acreage plus their pro rata share of the cost of constructing a 15,000-square-foot recreation building and swimming pool, and meet one of the following:

- i. ~~Pay in lieu fees equivalent to the acquisition, design and construction of the remainder of the required 3.42 acres not provided on-site acceptable to the City Manager; OR~~ *delete*

- ii. Provide the remainder of the required 3.42 acres within their development as contiguous, usable (maximum 2% grade for active recreation) land acceptable to the City Manager; OR
- iii. Provide a combination of in lieu fees and contiguous, usable (maximum 2% grade for active recreation) land within their development acceptable to the City Manager which, in combination, is equivalent to the remainder of the required 3.42 acres.

VI. PUBLIC REVIEW DISTRIBUTION:

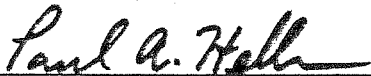
Draft copies or notice of this Mitigated Negative Declaration were distributed to:

City of San Diego  
Councilmember Frye, District 6  
Development Services Department  
Planning Department  
Park and Recreation Department  
San Diego City Schools  
San Diego Gas & Electric Company  
Semptra Energy  
Kearny Mesa Community Planning Group  
Kearny Mesa Town Council  
Mary Johnson  
U.S. Marine Corps Air Station Miramar  
Sunroad Enterprises  
Lennar Partners

VII. RESULTS OF PUBLIC REVIEW:

- ( ) No comments were received during the public input period.
- ( ) Comments were received but did not address the draft Mitigated Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.
- (X) Comments addressing the findings of the draft Mitigated Negative Declaration and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft Mitigated Negative Declaration, the Mitigation, Monitoring and Reporting Program and any Initial Study material are available in the office of the Land Development Review Division for review, or for purchase at the cost of reproduction.



Paul Hellman, Senior Planner  
Development Services Department

November 21, 2001  
Date of Draft Report

January 31, 2002  
Date of Final Report

Analysts: Shearer-Nguyen/Hellman



UNITED STATES MARINE CORPS  
MARINE CORPS AIR BASES WESTERN AREA MIRAMAR  
P.O. BOX 42001  
SAN DIEGO, CA 92145-2001

11103.8A  
G-5/41-0101  
December 5, 2001

CITY OF SAN DIEGO  
PLANNING AND DEVELOPMENT REVIEW  
ATTN LAWRENCE MONSERRATE  
1222 FIRST AVENUE MS 302  
SAN DIEGO CA 92101

RE: KEARNY MESA COMMUNITY PLAN; PUBLIC NOTICE OF A PROPOSED  
MITIGATED NEGATIVE DECLARATION FOR THE SUNROAD CENTRUM, LDR  
NO. 41-0101

Dear Mr. Monserrate,

This is in response to the Public Notice of a Proposed Mitigated  
Negative Declaration, which addresses residential construction  
with ancillary support within the Kearny Mesa Community Planning  
area.

The proposed project will be affected by operations of military  
fixed and rotary-wing aircraft transiting to and from Marine  
Corps Air Station (MCAS) Miramar. The project is located  
outside the adopted and projected 60-65 dB Community Noise  
Equivalent Level (CNEL) noise contours and is consistent with  
the land use compatibility guidelines for Miramar operations.  
Occupants will see and hear military aircraft and experience  
varying degrees of noise and vibration. Consequently, we are  
recommending full disclosure of noise and visual impacts to all  
initial and subsequent purchasers, lessees, or other potential  
occupants.

Normal hours of operation at MCAS Miramar are as follows:

Monday through Thursday	7:00 a.m. to 12:00 midnight
Friday	7:00 a.m. to 6:00 p.m.
Saturday, Sunday, Holidays	8:00 a.m. to 6:00 p.m.

MCAS Miramar is a master air station, and as such, can operate  
24 hours per day, 7 days per week. Fiscal and manpower  
constraints, as well as efforts to reduce the noise impact of  
our operations on the surrounding community, impose the

2.

1.

## RESPONSES TO COMMENTS

1. Because the project site is outside of the 60 dB CNEL noise contour of MCAS Miramar  
and is consistent with the land use compatibility guidelines for MCAS Miramar  
operations, no significant noise or land use impacts would result and no mitigation would  
be required. Therefore, the City of San Diego cannot require the full disclosure of noise  
and visual impacts to all initial and subsequent purchasers, lessees, or other potential  
occupants as recommended.

2. Comment noted.

above hours of operation. Circumstances frequently arise which require an extension of these operating hours.

Thank you for the opportunity to review this land use proposal. If we may be of any further assistance, please contact Ms. Rhonda Benally at (858) 577-6603.

Sincerely,



G. L. GOODMAN  
Colonel, U.S. Marine Corps  
Assistant Chief of Staff  
Community Plans and Liaison



# KEARNY MESA PLANNING GROUP

c/o Gibbs Flying Service, Inc.  
8906 Aero Drive  
San Diego, CA 92123  
858-277-0162 FAX 858-277-0654

January 16, 2002

Lawrence C. Monserrate, Environmental Review Manager  
Development Services Department  
City of San Diego  
1222 First Avenue  
San Diego, CA 92101

Re: Draft Mitigated Negative Declaration LDR No. 41-0101  
Sunroad Centrum 570 Additional Residential Units  
SDG&E Substation Relocation

Dear Mr. Monserrate,

Today, the Kearny Mesa Planning Group had a presentation from Mr. Steve Berg and Mr. Brian Paul, representing Sunroad Centrum, on the referenced Draft Mitigated Negative Declaration and the proposed Sunroad Centrum development. After the presentation there were many questions from members and a thorough discussion of the Mitigated Neg Dec. The group was generally supportive of the Mitigated Neg Dec. There was agreement with the findings that the SDG&E Substation relocation would not result in any significant impact and that the minimal PM traffic additions would be mitigated with the shuttle system. The group was concerned about the Park and Recreation requirements however. Last November, prior to the Sunroad Centrum Planning Commission hearing, the group commented that the Population Based Park standards may not be appropriate for this type of high density "City of Villages" development. The mitigation options 2.a., 2.b. and 2.c.i., ii., iii., all require a "public" 15,000 sq recreation building, pool and 3.42 acres of contiguous, adjacent or nearby land or a combination with in lieu fees to provide the same. The group thought this was excessive.

The marketplace will require the Centrum residential development to have private internal recreation facilities such as fitness centers, pools and multipurpose recreational areas (clubhouses). As we understand the proposed mitigation program and the Park and Recreation Department's policies, Centrum will not receive "credit" for these internal recreational facilities because they are "private", exclusively for residents of the surrounding development, not public use. This project may have more than one residential development, each with private facilities. These separate internal facilities will serve each development's residents, so they should be counted as a partial credit toward the overall Park and Recreation requirements. Requiring the duplication of a recreation building or pool for "public" use adjacent to this site, when the same facilities are available privately for all of the residents, is a poor use of resources. The mitigation requirements should allow the developers the option and flexibility of several private recreational

## RESPONSES TO COMMENTS

3. The park and recreation mitigation requirements contained in the Mitigated Negative Declaration were formulated by the City of San Diego Park and Recreation Department, based upon the population-based park and recreation facility policies of the City of San Diego Progress Guide and General Plan. However, as stated in the mitigation measure, the City Council has the authority to impose alternative requirements as a condition of project approval if they elect to do so.
4. Please see the response to comment 3.

Lawrence C. Monserrate  
January 16, 2002

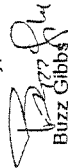
facilities and pools, properly sized to serve a specific number of residents, or a larger public facility that will serve the entire development.

The group believes that in addition to the option of "private" recreation facilities some "community serving public areas", complimentary to the private facilities, either adjacent or nearby, should be provided so that residents have a place to "get away", "go for a walk" or participate in field sports. We do not know what the appropriate size of this area should be or its configuration, but it is needed. The overall site for the additional 570 units in the Sunroad Centrum project, that is the subject of this Mitigated Neg Dec, is about 8 acres and requiring 3.42 acres of additional park and recreation land is excessive and could prevent the project from being built. San Diego is facing a severe shortage of both usable land and housing. Policymakers are advocating higher density developments to make future residential growth possible. The Population Based Park standards need to be updated to differentiate between single family suburban developments and high density "infill, City of Villages" type developments. The group urges reasonableness and flexibility is creating and applying park standards to this type of development.

The Kearny Mesa Planning Group adopted a resolution to summarize the above comments that stated: "The group supports a review and evaluation of the Community Based Park Standards as they now are applied to the Sunroad Centrum project and as these will be applied to "City of Villages" type high density residential developments in the future. We request you consider "private" recreational amenities that are included in each development as a partial credit toward the Park and Recreation requirements of this and future developments. We also recognize that some additional public, community serving, park and recreation areas are necessary and that these need to be reasonable in size and complimentary to the recreation facilities provide in each development. We urge the formulation of appropriate new park standards that will apply to this type of development."

The Kearny Mesa Planning Group appreciates the opportunity to comment on this document at this late date due to the non-receipt of the original notice of the Mitigated Negative Declaration last December. Please contact me if you need any additional information.

Sincerely,

  
Buzz Gibbs

cc: Paul Hellman  
Mike Westlake  
John Wilhoit  
KMPG Members

## RESPONSES TO COMMENTS

5. Please see the response to comment 3.

6. Please see the response to comment 3. While it is possible that revised population-based park and recreation facility policies will be adopted by the City Council as part of the future adoption of the Strategic Framework Element of the City's Progress Guide and General Plan, it is neither possible to accurately speculate as to the nature of such potential revisions or to apply potential revised policies at this point in time.

7. Comment noted.

City of San Diego  
Development Services Department  
LAND DEVELOPMENT REVIEW DIVISION  
1222 First Avenue, Mail Station 501  
San Diego, CA 92101  
(619) 446-5460

INITIAL STUDY  
LDR No. 41-0101

Subject: Sunroad Centrum. AMENDMENTS TO THE CITY OF SAN DIEGO PROGRESS GUIDE AND GENERAL PLAN; KEARNY MESA COMMUNITY PLAN; AND NEW CENTURY CENTER MASTER PLAN, DEVELOPMENT STANDARDS, AND DESIGN MANUAL; REZONE; AMENDMENT TO PCD/PRD/PID PERMIT NO. 99-1269; AND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND GENERAL DYNAMICS PROPERTIES, INC. (DOCUMENT NO. 00-18448) in order to increase the maximum amount of residential development permitted within a portion of the Master Plan Area. The proposal includes the relocation of a San Diego Gas & Electric Company electrical substation to a planned non-residential portion of the project area. The proposal would increase the maximum amount of residential development permitted within Planning Areas (PAs) 1A, 1B, 2B and 3A of the New Century Master Plan Area from 550 to 1,120 for sale or rent multi-family dwelling units, thereby increasing the total maximum number of residential dwelling units permissible within the Master Plan Area from 998 to 1,568. In addition to residential uses, office, hotel, restaurant and retail uses are currently permissible within these Planning Areas and would continue to be permissible uses. The proposal includes the rezone of the 8.2-acre PA 3A from M-1B to CA to allow residential use as an option within this Planning Area. The project applicant is the owner of the properties within PAs 1A, 2B and 3A, which comprise approximately 41 acres of the 244-acre Master Plan Area. The project area is located within the northwestern portion of the New Century Center Master Plan Area of the Kearny Mesa Community Planning Area. Applicant: Sunroad Enterprises.

I. PURPOSE AND MAIN FEATURES:

Sunroad Centrum Proposal

The Sunroad Centrum proposal consists of Amendments to The City of San Diego Progress Guide and General Plan; Kearny Mesa Community Plan; New Century Center Development Agreement; and New Century Center Master Plan, Development Standards, and Design Manual; Rezone; Amendment to PCD/PRD/PID Permit No. 99-1269; and Amendment to the Development Agreement Between the City of San Diego and General Dynamics, Inc. (Document No. 00-18448) in order to increase the maximum amount of residential development permitted within a portion of the Master Plan Area by 570 for sale or rent multi-family dwelling units. The Sunroad Centrum proposal is analyzed at a program level of analysis in this environmental document; discretionary approval by the City will be required prior to the development of the proposed additional 570 dwelling units, at which time subsequent environmental review in accordance with the provisions of the California Environmental Quality Act will be conducted. The proposal would be considered by the City Council in accordance with Decision Process Five, with recommendations provided by the Planning Commission. The New Century Center Master Plan governs the redevelopment/reuse of the 233-acre former General Dynamics

facility property and the 11-acre Computer Science Corporation facility site, located immediately east of State Route 163 and bounded by Lightwave Avenue and Clairemont Mesa Boulevard to the north, Ruffin Road to the east, Tech Way to the south, and Kearny Villa Road to the west, within the Kearny Mesa Community Planning Area (see Figure 1 - Location Map).

The proposal would increase the maximum amount of residential development permitted within Planning Areas (PAs) 1A, 1B, 2B and 3A of the Master Plan Area (see Figure 2 - Existing Land Use Plan and Figure 3 - Proposed Land Use Plan) by 570 units, from 550 to 1,120 for sale or rent multi-family dwelling units, thereby increasing the total maximum number of dwelling units permissible within the Master Plan Area from 998 to 1,568. In addition to residential uses, office, hotel, restaurant and retail uses are currently permissible within these Planning Areas and would continue to be permissible uses. The proposal includes a rezone of PA 3A from M-1B to CA to allow residential use as an option within this Planning Area. The project applicant is the owner of the properties within PAs 1A, 2B and 3A, which comprise approximately 41 acres of the 244-acre Master Plan Area.

#### San Diego Gas & Electric Company Electrical Substation Relocation

The relocation of an existing San Diego Gas & Electric Company (SDG&E) electrical substation (General Dynamics Substation) to a planned non-residential portion of the Sunroad Centrum project area is addressed at a project level of analysis in this environmental document. The purpose of the relocation is to implement the proposed development plan, while continuing to provide reliable electrical service to the project and other existing and future customers within SDG&E's service area.

#### *Project Site Location*

The proposed relocation site for the new substation (Spectrum Substation) is within Planning Area 1A, approximately 1,200 feet west of the current substation location within Planning Area 3A; both the existing and proposed substation locations are situated within the Sunroad Centrum portion of the Master Plan Area (see Figure 4 - Substation Location Map). The relocation site and the area immediately surrounding the site consists of previously graded, currently vacant land on the east, west and south. To the north is existing Lightwave Avenue. It is anticipated that in the future the proposed substation site will be surrounded by a parking structure of two to four stories above-grade; therefore, it is anticipated that the substation would be visible only from Lightwave Avenue and would be significantly buffered from intensive land uses by the parking structure. Within 500 feet of the relocation site, existing uses include vacant land to the east and southeast; industrial, office and restaurant uses to the north and northeast, vacant land and State Route 163 to the west; and vacant land to the south. Planned future uses within 500 feet of the relocation site include the existing uses to the north and northeast; office and/or residential uses beyond the parking structure to the east; and office/retail uses beyond the parking structure to the west and south. Figure 4 consists of an aerial photograph which includes the existing substation location, the proposed relocation site, and existing uses within 500 feet of the proposed relocation site.

The Spectrum Substation is planned to be located on the south side of Lightwave Avenue, approximately 400 feet east of the intersection of Lightwave Avenue and Kearny Villa Road, in the City of San Diego. It is designed to be an ultimate 69/12 kV station with eight 12 kV circuits. The proposed relocation site is 0.61 acres. The new station would serve the projected electric load growth within the Sunroad Centrum project area and the

surrounding area. Upon completion of construction of the Spectrum Substation, the two 12 kV circuits (C336 & C337) fed from the existing General Dynamics Substation would be transferred to the Spectrum Substation and the General Dynamics Substation would be deenergized and removed. The proposed relocation site is zoned CA by the City of San Diego. No removals are required to use the proposed relocation site. The existing 69 kV transmission line (TL 672) between Kearny, General Dynamics, Kyocera, and Mesa Heights will be looped underground into the substation using one 69 kV double circuit steel cable pole north of the substation along the existing right-of-way.

### *Distribution*

The Spectrum Substation is designed to have an ultimate capacity of 56 MVA, which requires two 28 MVA transformers with two sections of metal clad switchgear. Each section of switchgear would be equipped with circuit breakers for four 12 kV distribution circuits. To accommodate the distribution circuit getaways from the substation, one conduit package with eight 5-inch conduits would be installed from each section of switchgear out to Lightwave Avenue. Upon completion of construction of the Spectrum Substation, including the installation of both conduit packages, the two 12 kV circuits (C336 & C337) currently fed from the General Dynamics Substation would be transferred to the Spectrum Substation.

### *Substation Specifications*

The Spectrum Substation is designed to have an ultimate capacity of 56 MVA with two 28 MVA transformers, two 69 kV lines, two sections of metalclad switchgear for eight 12 kV circuits, and two 12 kV, 6 MVAr metalclad capacitor banks. The substation perimeter wall would be 150 feet on two sides and 178 feet on the remaining two sides; this wall would enclose an area of approximately 26,700 square feet (see Figure 5 - Substation Site Plan). A concrete masonry block (decorative split-faced block) would be constructed on all four sides of the substation (see Figure 6 - Typical Substation Perimeter Wall/Entry Gate). The height of the wall would be 10 feet with three strands of barbed wire on the inside of the wall. Access to the substation would be from Lightwave Avenue via two 20-foot wide driveways and two redwood sliding gates located along the north wall of the project site (see Figure 6). The site would be landscaped after construction of the perimeter wall and fences are completed and will be in accordance with SDG&E landscaping guidelines.

The initial development of the proposed substation includes one 69/12 kV low profile, low sound, 28 MVA transformer, metalclad switchgear with capacity for four 12 kV circuits, and one 12 kV, 6 MVAr metalclad capacitor bank. A prefabricated, integral Control and Battery Shelter (10-foot by 40-foot) would also be provided. The Control Shelter would contain protective relays, control switches with indicator lights for the 69 kV circuit breakers and 12 kV transformer circuit breakers, alarm panel, telecom equipment, and AC and DC power panels. The Battery Shelter would contain a 60-cell battery contained in a properly designed seismic battery rack and a battery charger. The battery system is designed to supply power to the protective relaying and breaker controls for loss of all AC power. The design of the entire substation is low profile with a maximum height of structures and equipment of 13 feet.

### *Transmission*

Transmission construction would involve the installation of one 69 kV double-circuit steel cable pole with a double circuit trench approximately 600 circuit feet from the steel

cable pole to the Spectrum Substation. A trench from the steel pole would house a 66-inch reinforced concrete pipe storm drain and would continue to the substation property where connections to the racks would be made. 1750 kcmil cable would be pulled from the substation to the steel pole requiring a pulling site approximately 50 feet from the pole and 50 feet wide. Construction would be completed with the removal of wires and poles which currently make the connection to the General Dynamics Substation. Changes to the TL672 circuit would not require and modification to the current operation and maintenance procedures employed by SDG&E along the right-of-way. SDG&E would continue to operate and maintain the transmission line and right-of-way in accordance with applicable SDG&E, California Public Utilities Commission, and Department of Energy/Environmental Protection Agency guidelines and requirements.

### *Site Development*

Construction of the substation equipment foundation would commence after site development. The equipment and support structures would be placed on the foundations and anchored in their final position. A bare copper wire grounding grid with buried copper rods would be installed within the perimeter of the substation and would be connected to all metal parts. Wiring from the Control Shelter to the equipment would be done in enclosed cable trench and underground conduit. All construction equipment, vehicles, personnel, and material staging areas would be within the limits of the proposed substation property. Construction access to the property would be via Lightwave Avenue.

Construction equipment would include tractors, loaders, and trucks for excavating, compacting, hauling, and finish grading of the site. A small amount of soil would be transported to and from the site with street-legal trucks. Portable cranes and heavy hauling trucks would be employed for the installation of the substation equipment and support steel. Concrete trucks, backhoes, crew trucks, and pick-up trucks would be traveling to and from the site during the installation of the foundations, ground grid, and underground ducts. Crew trucks, boom trucks, and pick-up trucks would be traveling to and from the site daily for the balance of the construction activities, testing and check-out, and installation of the transmission and distribution cable inside the substation.

Six to eight workers would be employed for the site development phase of the project. Eight to fifteen workers could be on-site during the balance of construction of the substation until just prior to wiring checkout and testing. At this stage of construction, approximately four to six electricians would be on-site. Final activities to energize the station would require six to eight electricians and two to four engineers. Total construction time including testing and energizing is anticipated to be nine months.

### *Substation Operation and Maintenance*

The substation would be unmanned and electric equipment within the substation would be controlled from the SDG&E Operating Center. The substation is designed to enhance safety and reduce risk of electrocution. The substation wall would be of sufficient height and texture to prevent unassisted and unauthorized entrance. Barbed wire would be attached to the inside of the block wall and would not be visible from Lightwave Avenue. The entrance gates would be locked at all times and warning signs would be posted on the perimeter wall. Entry to the substation would be restricted to authorized SDG&E personnel only.

Maintenance includes equipment testing, monitoring, and repair as well as emergency and routine procedures for service continuity and preventative maintenance. A two to four

person crew would make an estimated four trips per year to the substation to perform maintenance. One pick-up truck with one Troubleshooter would be required to visit the substation periodically to perform inspections or to operate equipment.

### *Evaluation of Alternative Sites*

During the course of evaluating the substation relocation, the applicant and SDG&E evaluated three sites, all within the boundaries of the Master Plan Area. Site A is the proposed site as described above, Site B was a portion of the property located at the northwest corner of Overland Avenue and Lightwave Avenue, and Site C was a portion of the property located at the southwest corner of Clairemont Mesa Boulevard and Overland Avenue. Site A was selected due to its superior characteristics in several categories. It would provide the best access (can be served by two driveways) and turning radii; requires the shortest underground transmission bring-up across Lightwave Avenue; and requires the shortest distribution getaways from the site. Access to Site B and the turning radii would be constrained by the proposed parking lot layout. Also, the transmission drop-off and distribution getaway layouts would require an approximately 300-foot long and 20-foot wide underground utility easement; the location of this underground easement could represent a significant constraint to property development. Due to existing medians and median striping on Clairemont Mesa Boulevard, access to Site C would only be from one driveway entrance; a single access driveway does not meet SDG&E criteria for substation access. The high volume of traffic on Clairemont Mesa Boulevard would also result in a higher risk of traffic conflicts than Sites A or B. For Site C, the extension of transmission bring-up and distribution getaways would be from Lightwave Avenue and would require a 500-foot long and 20-foot wide easement, which would present serious development constraints to the property.

## II. ENVIRONMENTAL SETTING:

Planning Areas 1A, 1B, 2B and 3A of the New Century Center Master Plan are situated within the western half of the Master Plan Area. These Planning Areas are comprised of flat, rough-graded, vacant properties located within an improved mixed-use development area, surrounded by various developed, under construction, and vacant properties.

## III. ENVIRONMENTAL ANALYSIS: See attached Initial Study Checklist.

## IV. DISCUSSION:

### Transportation/Circulation

The potential transportation/circulation impacts of the proposed increase in residential development within the New Century Center Master Plan Area was assessed by Urban Systems Associates, Inc. Based on the previous traffic impact analysis of the New Century Center Master Plan, it was established that P.M. peak traffic is the critical peak. During the P.M. peak, the proposed additional residential units are expected to generate 307 trips. One of the traffic mitigation measures imposed at the time of the approval of the Master Plan was the provision of an internal shuttle. The early implementation of this internal shuttle system would result in a reduction of internal trips which would offset the additional trips associated with the proposed increase in residential units. With the implementation of this requirement, as outlined in Section V, Mitigation Monitoring and Reporting Program, of the Mitigated Negative Declaration, the transportation/circulation impacts projected to result from the development of an additional 570 residential units within the Master Plan Area would be mitigated to below a level of significance.

## Public Services

### *Park and Recreation*

The existing New Century Center Master Plan allows for a maximum of 998 dwelling units, comprised of 448 units within Planning Area 3B, which have been approved for development under Planned Residential Development Permit No. 99-0509, and a maximum of 550 units within Planning Areas 1A, 1B, 2B and 3A. A recreation center (with swimming pool and spa) and a one-acre turf open space area will be provided within Planning Area 3B, in accordance with approved Planned Residential Development Permit No. 99-0509. Under the existing Master Plan, no public park and recreation facilities exist or are planned to be constructed within the Master Plan Area. The 6.6-acre privately owned Missile Park (Planning Area 7) is located within the Master Plan Area at the northeast corner of the intersection of Overland Avenue and Lightwave Avenue (see Figure 3). Pursuant to the Master Plan, Missile Park is to be used as a project amenity for public use and no development will be permitted within this Planning Area.

The City of San Diego Progress Guide and General Plan calls for the provision of neighborhood park and recreation facilities within a one-half mile radius of resident populations between 3,500 and 5,000. With the proposed addition of up to 570 additional dwelling units within the Master Plan area, the need for neighborhood park and recreation facilities to serve Master Plan Area residents would be significantly exacerbated. Based on the Park and Recreation Department's standard ratios of 2.5 residents per unit and 2.4 acres of useable park land per 1,000 residents, 3.4 acres of neighborhood park and recreation facilities would be needed to serve the anticipated residents of the 570 units in order to meet the General Plan standard. Owners/permittees of residential developments beyond the 998 dwelling units authorized under the previously adopted New Century Center Master Plan would be responsible for the provision of adequate public neighborhood park and recreation facilities to serve this incremental population, as outlined in Section V, Mitigation Monitoring and Reporting Program, of the Mitigated Negative Declaration. Through the implementation of this requirement, the public services/park and recreation impacts of the proposal would be mitigated to below a level of significance.

### *Schools*

Public elementary, middle school and high school services to Master Plan area residents would be provided by the San Diego Unified School District. The nearest public school facilities are located in the Tierrasanta and Serra Mesa communities, both of which are approximately two miles from the Master Plan Area. Therefore, pedestrian access to the nearest school facilities is not possible. The district has no plans at this time to develop neighborhood school facilities within the Kearny Mesa community. It is district policy to provide bus transportation only for integration and special education programs; the district does not transport students to their neighborhood school based on distance from their residence to their school site. The district has requested that all residential developers within the Master Plan Area be required to inform potential residents of this policy, and the distance from the developments to the schools assigned to serve the area. However, the district did not identify any school facilities impacts that would result from the proposed increase in Master Plan Area residential development (Correspondence from Joe Wolf, San Diego City Schools, to Mike Westlake, City of San Diego, dated April 10, 2000).



SDG&E Electrical Substation Relocation*Noise*

In order to assess the potential noise impacts of the proposed electrical substation, a sound level analysis was conducted by SDG&E, the results of which are contained in a report entitled, "Sound Level Analysis, Spectrum 69/12 kV Substation," dated August 31, 2001. This report is available for review in the office of the Land Development Review Division and is summarized below.

The sound analysis was performed for the ultimate substation configuration of two 69/12 kV, 15/20/25 MVA transformers. The sources of noise for these transformers are typically 60-cycle vibration and cooling fans. The cooling fans operate in stages as the main tank oil temperature increases due to increased loading. The additional cooling allows the transformer to achieve the higher ratings. The noise level used in the analysis was 61 dBA (A-weighted decibels), which is the maximum allowed by SDG&E. No noise attenuation was considered for the 12-foot high by 8-inch thick block wall that is proposed to surround the substation on all sides, resulting in a very conservative analysis of anticipated noise impacts. Sound level calculations were performed using the EENoise program. The program uses noise equations published in the Standard Handbook for Electrical Engineers, 10<sup>th</sup> Edition, Section 11-100. The input data required for the sound analysis program includes the length, width, and height dimensions of each transformer, the sound level of each transformer, the number of transformers, the coordinates of the receptors, and coordinates of each noise source. All coordinates are referenced to the origin of the coordinate system.

Based upon the results of the noise modeling, it is projected that the noise levels along the perimeter of the substation site would range from approximately 40 to 47 dBA, which as stated above does not take into account noise attenuation effects of the proposed perimeter block wall. The City of San Diego Municipal Code regulates maximum sound levels which may be generated at or beyond the boundary of a given property; the established limits vary by time of day and by the zoning of both the noise generating and noise receiving properties. In cases where both the noise generating and noise receiving properties are both commercially zoned, as is the case with the proposed substation, the one-hour average sound level limit at or beyond the boundaries of the property is 60 dB between 7 P.M. and 7 A.M. and 65 dB between 7 A.M. and 7 P.M. Therefore, based upon the results of the sound level analysis, the proposed operation of the substation is anticipated to be well within the limits of the City of San Diego Municipal Code.

*Human Health/Public Safety*

The substation is designed to enhance safety and reduce risk of electrocution. The substation wall would be of sufficient height and texture to prevent unassisted and unauthorized entrance. Barbed wire would be attached to the inside of the block wall and would not be visible from Lightwave Avenue. The entrance gates would be locked at all times and warning signs would be posted on the perimeter wall. Entry to the substation would be restricted to authorized SDG&E personnel only. It is anticipated that the substation would be surrounded on one side by a public street, Lightwave Avenue, and on the remaining three sides by an above-grade parking structure. The substation would, therefore, not be situated immediately adjacent to any habitable structures, such as residential development or office/retail space. Based upon the design and operational characteristics of the proposed substation, no significant human health/public safety impacts are anticipated to result.

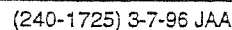
V. RECOMMENDATION:

On the basis of this initial evaluation:

- ☐ The proposed project would not have a significant effect on the environment, and a NEGATIVE DECLARATION should be prepared.
- ☒ Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described in Section IV above have been added to the project. A MITIGATED NEGATIVE DECLARATION should be prepared.
- ☐ The proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT should be required.

PROJECT ANALYST: Shearer-Nguyen/Hellman

Attachments: Figure 1 - Location Map  
Figure 2 - Existing Land Use Plan  
Figure 3 - Proposed Land Use Plan  
Figure 4 - Substation Location Map  
Figure 5 - Substation Site Plan  
Figure 6 - Typical Substation Perimeter Wall/Entry Gate  
Initial Study Checklist



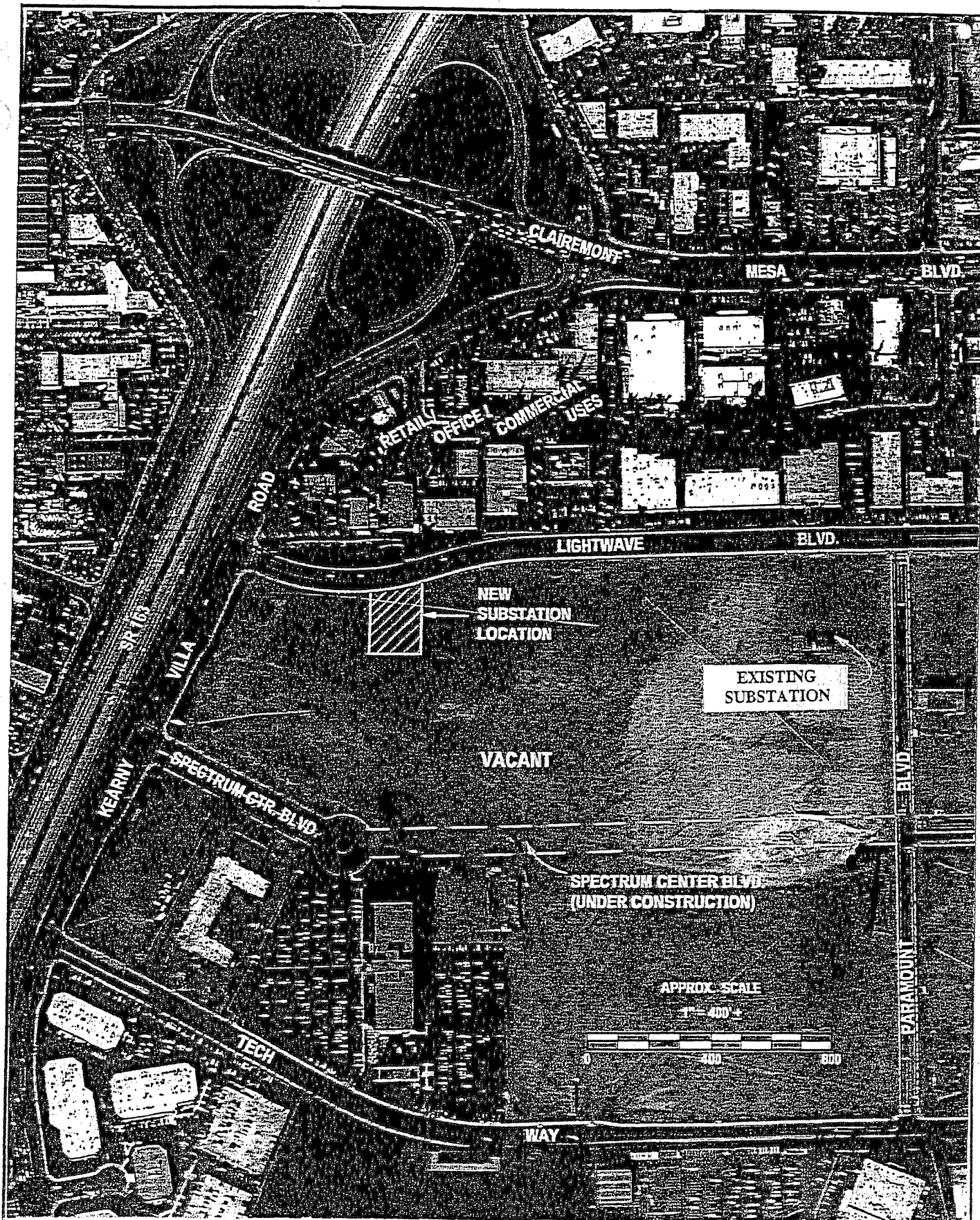
## LOCATION MAP

Environmental Analysis Section

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## Figure

1



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# Substation Location Map

Environmental Analysis Section

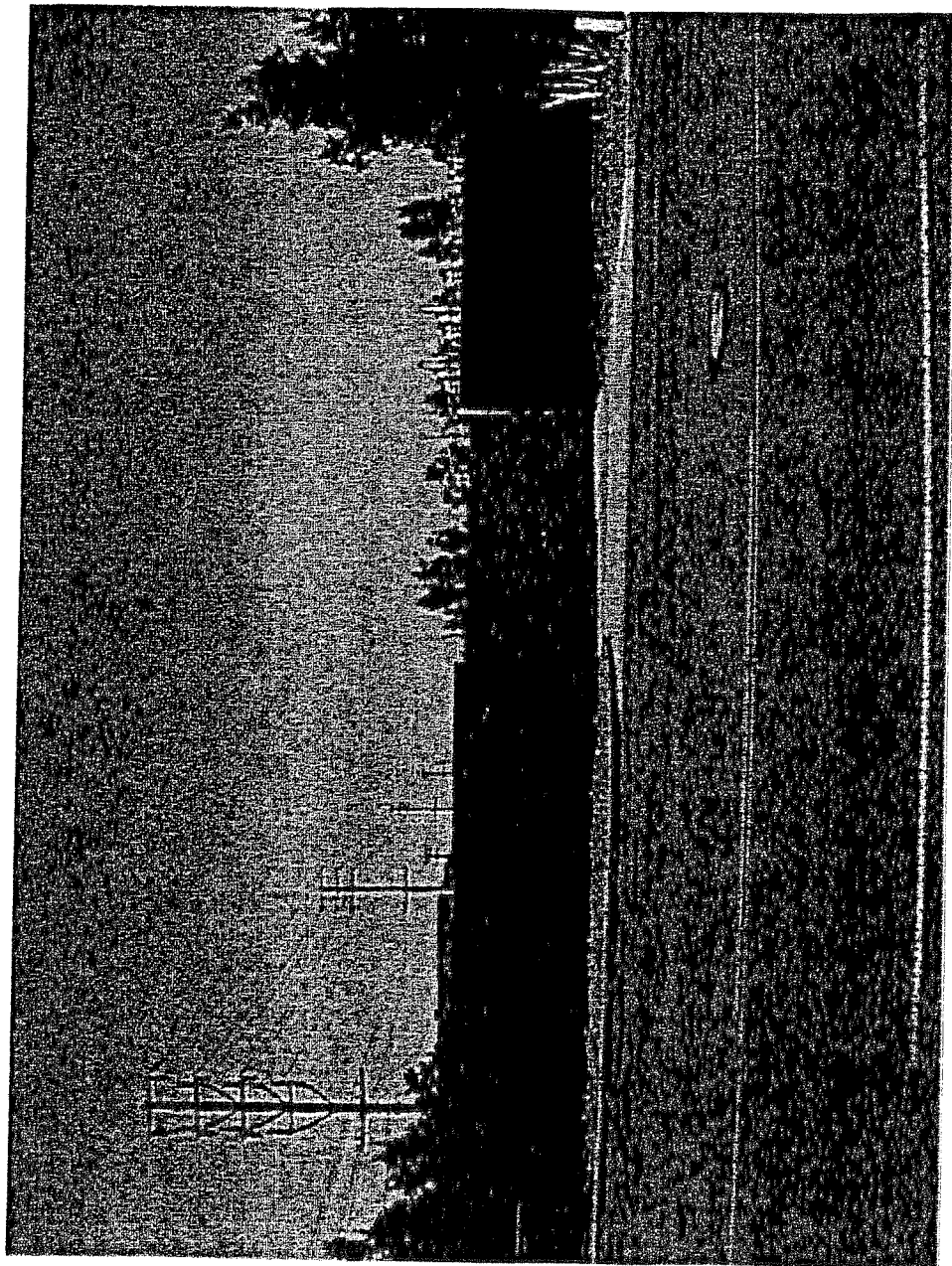
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Figure

4







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# Typical Substation Perimeter Wall/Entry Gate

Environmental Analysis Section

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Figure

6

## Initial Study Checklist

Date May 24, 2001LDR No. 41-0101

## III. ENVIRONMENTAL ANALYSIS:

This Initial Study checklist is designed to identify the potential for significant environmental impacts which could be associated with a project. All answers of "yes" and "maybe" indicate that there is a potential for significant environmental impacts and these determinations are explained in Section IV.

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
A. <u>Geology/Soils</u> . Will the proposal result in:			
1. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards? <u>See Initial Study Discussion.</u>	—	—	<u>X</u>
2. Any increase in wind or water erosion of soils, either on or off the site? <u>No increase in erosion would result.</u>	—	—	<u>X</u>
B. <u>Air</u> . Will the proposal result in:			
1. Air emissions which would substantially deteriorate ambient air quality? <u>The project does not have the potential to substantially deteriorate ambient air quality.</u>	—	—	<u>X</u>
2. The exposure of sensitive receptors to substantial pollutant concentrations? <u>The project would not generate substantial amounts of air pollutants.</u>	—	—	<u>X</u>
3. The creation of objectionable odors? <u>No odors would be created.</u>	—	—	<u>X</u>
4. The creation of dust? <u>No dust creation would result.</u>	—	—	<u>X</u>

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
5. Any alteration of air movement in the area of the project? <u>No alteration of air movement in the project area would result.</u>	—	—	<u>X</u>
6. A substantial alteration in moisture, or temperature, or any change in climate, either locally or regionally? <u>No such alterations or changes would result.</u>	—	—	<u>X</u>
C. <u>Hydrology/Water Quality.</u> Will the proposal result in:			
1. Changes in currents, or the course or direction of water movements, in either marine or fresh waters? <u>No such changes would result.</u>	—	—	<u>X</u>
2. Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff? <u>No such impacts would result.</u>	—	—	<u>X</u>
3. Alterations to the course or flow of flood waters? <u>No such impacts would result.</u>	—	—	<u>X</u>
4. Discharge into surface or ground waters, or in any alteration of surface or ground water quality, including, but not limited to temperature, dissolved oxygen or turbidity? <u>No such impacts would result.</u>	—	—	<u>X</u>
5. Discharge into surface or ground waters, significant amounts of pesticides, herbicides, fertilizers, gas, oil, or other noxious chemicals? <u>No such impacts would result.</u>	—	—	<u>X</u>
6. Change in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of			



	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
a river or stream or the bed of the ocean or any bay, inlet or lake? <u>No such changes would result.</u>	—	—	<u>X</u>
7. Exposure of people or property to water related hazards such as flooding? <u>No such impacts would result.</u>	—	—	<u>X</u>
8. Change in the amount of surface water in any water body? <u>No such changes would result.</u>	—	—	<u>X</u>

D. Biology. Will the proposal result in:

1. A reduction in the number of any unique, rare, endangered, sensitive, or fully protected species of plants or animals? <u>No such impacts would result.</u>	—	—	<u>X</u>
2. A substantial change in the diversity of any species of animals or plants? <u>No such impacts would result.</u>	—	—	<u>X</u>
3. Introduction of invasive species of plants into the area? <u>No such impacts would result.</u>	—	—	<u>X</u>
4. Interference with the movement of any resident or migratory fish or wildlife species? <u>No such impacts would result.</u>	—	—	<u>X</u>
5. An impact on a sensitive habitat, including, but not limited to streamside vegetation, oak woodland, vernal pools, coastal salt marsh, lagoon, wetland, or coastal sage scrub or chaparral? <u>No such impacts would result.</u>	—	—	<u>X</u>
6. Deterioration of existing fish or wildlife habitat? <u>No such impacts would result.</u>	—	—	<u>X</u>

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
E. <u>Noise</u> . Will the proposal result in:			
1. A significant increase in the existing ambient noise levels? <u>See Initial Study Discussion regarding proposed SDG&amp;E electrical substation relocation.</u>	—	<u>X</u>	—
2. Exposure of people to noise levels which exceed the City's adopted noise ordinance? <u>See E.1.</u>	—	<u>X</u>	—
3. Exposure of people to current or future transportation noise levels which exceed standards established in the Transportation Element of the General Plan? <u>The project area is outside of the 60 dB noise contours of Marine Corps Air Station and Montgomery Field and is not immediately adjacent to State Route 163. No such exposure would result.</u>	—	—	<u>X</u>
F. <u>Light, Glare and Shading</u> . Will the proposal result in:			
1. Substantial light or glare? <u>No such impacts would result.</u>	—	—	<u>X</u>
2. Substantial shading of other properties? <u>No such impacts would result.</u>	—	—	<u>X</u>
G. <u>Land Use</u> . Will the proposal result in:			
1. A land use which is inconsistent with the adopted community plan land use designation for the site? <u>The proposal includes amendments to the Kearny Mesa Community Plan to avoid any such inconsistencies.</u>	—	—	<u>X</u>
2. A conflict with the goals, objectives and recommendations of the community			

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
plan in which it is located? <u>See G.1.</u>	—	—	<u>X</u>
3. A conflict with adopted environmental plans for the area? <u>No such conflicts would result.</u>	—	—	<u>X</u>
4. Land uses which are not compatible with aircraft accident potential as defined by a SANDAG Airport Land Use Plan (ALUC)? <u>The project area is not located within any aircraft accident potential zone. No such incompatibilities would result.</u>	—	—	<u>X</u>
H. <u>Natural Resources</u> . Will the proposal result in:			
1. The prevention of future extraction of sand and gravel resources? <u>No such impacts would result.</u>	—	—	<u>X</u>
2. The conversion of agricultural land to nonagricultural use or impairment of the agricultural productivity of agricultural land? <u>No agricultural land would be affected.</u>	—	—	<u>X</u>
I. <u>Recreational Resources</u> : Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities? <u>See Initial Study Discussion.</u>	—	<u>X</u>	—
J. <u>Population</u> . Will the proposal alter the planned location, distribution, density, or growth rate of the population of an area? <u>The proposal would alter the planned location and density of population in the project area, the potential impacts of which are identified elsewhere in this checklist.</u>	—	—	<u>X</u>
K. <u>Housing</u> . Will the proposal affect existing housing in the community, or create a demand for additional housing?	—	—	<u>X</u>

Yes      Maybe      No

No effects to existing to housing or the creation of demand for additional housing are anticipated to result from the proposal.

L. Transportation/Circulation. Will the proposal result in:

- |    |   |   |          |          |
|----|---|---|----------|----------|
| 1. | Traffic generation in excess of specific/<br>community plan allocation?<br><u>See Initial Study Discussion.</u>   | — | <u>X</u> | —        |
| 2. | An increase in projected traffic which is<br>substantial in relation to the capacity of<br>the street system?<br><u>See Initial Study Discussion.</u>                                       | — | <u>X</u> | —        |
| 3. | An increased demand for off-site parking?<br><u>No such impacts would result.</u>   | — | —        | <u>X</u> |
| 4. | Effects on existing parking?<br><u>No such effects would result.</u>  | — | —        | <u>X</u> |
| 5. | Substantial impact upon existing or<br>planned transportation systems?<br><u>See Initial Study Discussion.</u>  | — | <u>X</u> | —        |
| 6. | Alterations to present circulation<br>movements including effects on existing<br>public access to beaches, parks, or<br>other open space areas?<br><u>No such alterations would result.</u> | — | —        | <u>X</u> |
| 7. | Increase in traffic hazards to motor<br>vehicles, bicyclists or pedestrians?<br><u>No significant increase in traffic hazards<br/>is anticipated.</u>                                       | — | —        | <u>X</u> |

M. Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
1. Fire protection? <u>The project would not result in any such impacts.</u>	—	—	<u>X</u>
2. Police protection? <u>See M.1.</u>	—	—	<u>X</u>
3. Schools? <u>See Initial Study Discussion.</u>	—	<u>X</u>	—
4. Parks or other recreational facilities? <u>See Initial Study Discussion.</u>	—	<u>X</u>	—
5. Maintenance of public facilities, including roads? <u>See M.1.</u>	—	—	<u>X</u>
6. Other governmental services? <u>See M.1.</u>	—	—	<u>X</u>
N. <u>Utilities.</u> Will the proposal result in a need for new systems, or require substantial alterations to existing utilities, including:			
1. Power? <u>See Initial Study Discussion regarding proposed SDG&amp;E electrical substation relocation.</u>	—	—	<u>X</u>
2. Natural gas? <u>No such impacts would result.</u>	—	—	<u>X</u>
3. Communications systems? <u>See N.2.</u>	—	—	<u>X</u>
4. Water? <u>See N.2.</u>	—	—	<u>X</u>
5. Sewer? <u>See N.2.</u>	—	—	<u>X</u>

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
6. Storm water drainage? <u>See N.2.</u>	—	—	<u>X</u>
7. Solid waste disposal? <u>See N.2.</u>	—	—	<u>X</u>
O. <u>Energy.</u> Will the proposal result in the use of excessive amounts of fuel or energy? <u>The project would not result in the use of</u> <u>excessive amounts of fuel or energy.</u>	—	—	<u>X</u>
P. <u>Water Conservation.</u> Will the proposal result in:			
1. Use of excessive amounts of water? <u>The proposed development would not</u> <u>use excessive amounts of water.</u>	—	—	<u>X</u>
2. Landscaping which is predominantly non-drought resistant vegetation? <u>No such impacts would result.</u>	—	—	<u>X</u>
Q. <u>Neighborhood Character/Aesthetics.</u> Will the proposal result in:			
1. The obstruction of any vista or scenic view from a public viewing area? <u>No public views would be obstructed.</u>	—	—	<u>X</u>
2. The creation of a negative aesthetic site or project? <u>No negative aesthetic impacts would</u> <u>result.</u>	—	—	<u>X</u>
3. Project bulk, scale, materials, or style which will be incompatible with surrounding development? <u>No such impacts would result.</u>	—	—	<u>X</u>
4. Substantial alteration to the existing character of the area? <u>No substantial alteration to the existing</u> <u>character of the area would result.</u>	—	—	<u>X</u>

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
5. The loss of any distinctive or landmark tree(s), or a stand of mature trees? <u>No such trees exist on the site.</u>	—	—	<u>X</u>
6. Substantial change in topography or ground surface relief features? <u>No such changes would result.</u>	—	—	<u>X</u>
7. The loss, covering or modification of any unique geologic or physical features such as a natural canyon, sandstone bluff, rock outcrop, or hillside with a slope in excess of 25 percent? <u>No such features would be impacted.</u>	—	—	<u>X</u>
R. <u>Cultural Resources.</u> Will the proposal result in:			
1. Alteration of or the destruction of a prehistoric or historic archaeological site? <u>No such impacts would result.</u>	—	—	<u>X</u>
2. Adverse physical or aesthetic effects to a prehistoric or historic building, structure, object, or site? <u>No such impacts would result.</u>	—	—	<u>X</u>
3. Adverse physical or aesthetic effects to an architecturally significant building, structure, or object? <u>No such impacts would result.</u>	—	—	<u>X</u>
4. Any impact to existing religious or sacred uses within the potential impact area? <u>No such impacts would result.</u>	—	—	<u>X</u>
S. <u>Paleontological Resources.</u> Will the proposal result in the loss of paleontological resources? <u>No such impacts would result.</u>	—	—	<u>X</u>

Yes      Maybe      No

T. Human Health/Public Safety. Will the proposal result in:

- |    |  |   |          |          |
|----|--|---|----------|----------|
| 1. | Creation of any health hazard or potential health hazard (excluding mental health)?<br><u>See Initial Study Discussion regarding proposed SDG&amp;E electrical substation relocation.</u>            | — | <u>X</u> | —        |
| 2. | Exposure of people to potential health hazards?<br><u>See T.1.</u>   | — | <u>X</u> | —        |
| 3. | A future risk of an explosion or the release of hazardous substances (including but not limited to gas, oil, pesticides, chemicals, radiation, or explosives)?<br><u>No such risks would result.</u> | — | —        | <u>X</u> |

U. Mandatory Findings of Significance.

- |    |  |   |   |          |
|----|--|---|---|----------|
| 1. | Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?<br><u>No such effects would result.</u> | — | — | <u>X</u> |
| 2. | Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the   |   |   |          |



- |   | <u>Yes</u> | <u>Maybe</u> | <u>No</u> |
|---|------------|--------------|-----------|
| future.)<br><u>No such impacts would result.</u>  | —          | —            | <u>X</u>  |
| 3. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)<br><u>No such impacts would result.</u> | —          | —            | <u>X</u>  |
| 4. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?<br><u>See Initial Study Discussion regarding proposed SDG&amp;E electrical substation relocation.</u>   | —          | <u>X</u>     | —         |

## INITIAL STUDY CHECKLIST

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- ☐ City of San Diego Zoning Maps

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